



South Carolina House of Representatives

# Legislative Update

Robert W. Harrell, Jr., Speaker of the House

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## MAJOR ISSUES FROM THE 2008 LEGISLATIVE SESSION

This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage. Since this document focuses on key issues, not all provisions of legislation are included in the summaries.

This document will be revised and expanded weekly as the status of major bills changes. This report highlights legislative activity through Thursday, June 19, 2008. It is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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## **APPROPRIATIONS**

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The General Assembly approved **H.4800**, the Fiscal Year 2008-2009 General Appropriations Bill, and **H.4801**, a joint resolution providing for Capitol Reserve Fund appropriations. Highlights of the state government budget include:

- Full funding of the Education Finance Act with \$94.5 million, for a base student cost of \$2,578.
- Teacher salaries are funded at \$300 over the Southeastern average.
- \$20.8 million is included for school bus operations.
- \$3.3 million is included for textbooks.
- The Public School Child Development Education Pilot Program is funded with \$15.7 million.
- \$12 million is included for summer schools.
- Full funding of the LIFE, HOPE, and Palmetto Fellows Scholarship programs.
- \$3 million is appropriated to the Center for Accelerated Technology, which works with businesses locating in South Carolina and technical colleges in order to provide training for workers.
- \$2.5 million is provided for the Hydrogen Grants program at the South Carolina Research Authority.
- \$4.5 million for the LightRail broadband, high-speed optical research network at the state's research universities.
- The Department of Parks, Recreation, and Tourism receives \$10 million for destination specific tourism advertising grants.
- A 1% State employee pay increase is provided with \$19.9 million.
- State Health Insurance Plan increases are funded from projected 2008 surpluses within the plan so as to provide for no premium increases or reductions in benefits.
- \$2.9 million is appropriated for the Home and Community Based Services Program which provides services for senior citizens such as Meals on Wheels.
- \$39 million is appropriated to the Department of Health and Human Services for Medicaid Maintenance of Effort.
- \$13 million is appropriated to the Department of Health and Human Services for Institutes for Mental Health Transition.
- \$4.5 million is included for the Pervasive Developmental Disorder Waiver within the Department of Disabilities and Special Needs for the Early Intensive Behavior

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Intervention Treatment program that serves children diagnosed with such developmental disorders as Autism and Asperger's Syndrome.

- \$2.4 million is appropriated to the Department of Health and Environmental Control for the AIDS Drug Assistance Program to eliminate completely the waiting list for treatment.
- \$2.4 million is provided for the purchase of vaccines for under-insured children.
- \$2 million is appropriated to the Department of Health and Environmental Control for the Best Chance Network early detection breast and cervical cancer screenings.
- \$9 million is provided for the Child Support Enforcement System.
- \$3.9 million is appropriated for public defenders at the Commission on Indigent Defense.
- The Department of Corrections receives funding for the operation of the Leath Correctional Institution and additional lock-up units.

*STATUS: Having passed the House of Representatives and the Senate, H.4800 (R.293) (Act No. 310) and H.4801 (R.294) were ratified on May 22, 2008. Portions of the legislation were vetoed by the Governor on May 28. The House and Senate subsequently sustained some of those vetoes, but overrode other vetoes to allow those items to become law along with the portions of the legislation not vetoed by the Governor.*

# BUSINESS/ECONOMIC DEVELOPMENT

## BROADBAND SERVICE COMMISSION

The General Assembly approved H.4735, a joint resolution that creates the South Carolina Educational Broadband Service Commission for the purpose of obtaining and evaluating proposals from commercial entities for the leasing of the excess spectrum capacity licensed to the South Carolina Educational Television Network that will become available following the federally required conversion to digital broadcasting. The commission is composed of seven members all of whom must be from the private sector and have a background of substantial duration and expertise in business. The President Pro Tempore of the Senate, the Speaker of the House of Representatives, the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, the chairman of the State Regulation of Public Utilities Review Committee, the vice chairman of the State Regulation of Public Utilities Review Committee, and the Governor each appoints one member of the commission. The legislation establishes the competitive process that is to be used by the commission. After evaluation, the commission is to present the proposals and its recommendations to the Joint Bond Review Committee. If the Joint Bond Review Committee determines that a proposal should be approved, it is presented to the Budget and Control Board for review and approval. The commission is exempt from the Consolidated Procurement Code. The commission shall terminate six months after all agreements resulting from an approved proposal are finally executed or no later than June 30, 2010. Upon termination of the commission, the Budget and Control Board assumes responsibility for the management and administration of all agreements resulting from an approved proposal.

*STATUS: Having passed the House of Representatives and the Senate, H.4735 was ratified on May 22, 2008 (R.291) and signed into law by the Governor on May 27.*

## FUEL BLENDING

The General Assembly approved, as part of S.1143, provisions to allow South Carolina's fuel distributors and retailers to continue to blend gasoline and ethanol, a practice referred to as splash blending. The legislation provides that, regardless of other products offered, a motor fuel terminal located within the State must offer a petroleum product that has not been blended with ethanol and that is suitable for subsequent blending with ethanol. No action may be taken to deny a distributor or retailer from being the blender of record. The legislation also provides that a

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distributor or retailer and a refiner must utilize the Renewable Identification Number (RIN) trading system.

*STATUS: Having passed the Senate and the House of Representatives, S.1143 was ratified on June 5, 2008 (R.356). The Governor vetoed the legislation on June 11.*

## **RESEARCH CENTERS OF ECONOMIC EXCELLENCE PROGRAM EXTENSION**

The General Assembly approved **S.1252**, a bill authorizing the continuation of the Research Centers of Economic Excellence program that utilizes South Carolina Education Lottery funds for the creation of endowed professorships at the State's research universities to anchor centers conducting scientific research with business applications. The legislation allows for the continuation of the program by eliminating the 2010 expiration date that is currently imposed upon the Centers of Excellence Matching Endowment. The legislation also eliminates the current \$200,000,000 monetary cap and provides instead that the endowment must be funded by appropriations from the South Carolina Education Lottery Account in an amount equal to thirty million dollars annually, except that endowment appropriations may not be funded until all state-supported scholarships are fully funded and only if eighty percent of the total state appropriations have been awarded by the review board as of June thirtieth of the previous fiscal year.

The legislation expands the membership the Research Centers of Excellence Review Board from nine to eleven by adding an appointee of the chairman of the Senate Finance Committee and an appointee of the chairman of the House Ways and Means Committee. The legislation also revises the reporting requirements for review board so as to provide that their annual report be issued to the General Assembly as well as to the State Budget and Control Board. This annual report must include, but not be limited to, a complete accounting for total state appropriations to the endowment and total proposals awarded up to the previous fiscal year. The legislation establishes the minimum criteria for the full review process that must be conducted before an endowed chair proposal is awarded.

The legislation allows interest earning to be used at the review board's discretion for additional state awards. The legislation revises matching fund provisions by replacing requirements for private funds with requirements for nonstate funds, thereby allowing such sources as federal funds to be counted for matching purposes. Matching fund provisions are also revised to allow for the acceptance of cash equivalent and in-kind donations from nonstate sources. The review board may, at its discretion, permit the senior research universities to utilize a portion of the nonstate matching funds of any single award to pay for initial operating costs including, but not limited to, infrastructure improvement, purchase of equipment, and payment of salaries for junior faculty, researchers, technicians, and other support staff directly associated with the establishment of the professorship's research efforts and the creation of the center of economic excellence which the professorship serves. The portion established by the review board must apply equally to all of the senior research universities' centers of economic excellence and endowed professorships. The full amount of every state

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award, with the exception of programmatic support proposals, must be placed into and remain in the endowment.

The legislation provides that eligible research universities are strongly encouraged to partner with other South Carolina colleges and universities to develop proposals that will enhance the economic competitiveness of our State, and to enhance science and engineering through collaborations in related disciplines.

*STATUS: Having passed the Senate and the House of Representatives, S.1252 was ratified on June 5, 2008 (R.363). The Governor vetoed the legislation on June 11.*

## **RESIDENTIAL IMPROVEMENT DISTRICT ACT**

The General Assembly approved H.4745, a bill enacting the “South Carolina Residential Improvement District Act”, to provide a new option for financing infrastructure and other improvements needed to facilitate new development. Under the legislation, the owners of real property may request the governing body of a county or municipality to create a district consisting of that real property and to impose assessments within that district to defray the cost of proposed improvements. This petition must be signed by the owners of all the real property within the proposed district and must contain specified features including an improvement plan, a cost estimate, and a projected schedule for completion of the improvements. After complying with the legislation’s requirements for holding public hearings, the county or municipal governing body may create the district by enactment of an ordinance if the proposed improvements meet such criteria as encouraging development, preserving or increasing property values, and maintaining or improving the tax base. An improvement district may be made up of various proposed land uses including residential, commercial, industrial, institutional, or a combination of uses. Upon creation of an improvement district the local governing body may impose upon the landowners in that district assessments to fund improvements such as roads, sidewalks, parks, playgrounds, recreational facilities, parking, facade redevelopment, storm water drainage projects, utilities, and school construction or renovation. A county or municipality is authorized to issue bonds secured against the revenue from these assessments on real property or any other source of funds not constituting a general tax. Improvements may be financed by another method so long as the full faith and credit of the local government is not pledged as security.

Assessments must be based on actual costs of the improvements or reasonable estimates. The legislation establishes provisions for determining the amounts of assessments and requires local governments to maintain assessment rolls. The legislation includes notification requirements and a procedure for contesting assessments. A local government that has not adopted a comprehensive plan is not eligible to impose assessments.

Upon the issuance of any bonds secured by assessments, the local governing body shall collect from the property owner an improvement fee in an amount equal to four percent of the aggregate value of the obligations. The improvement fee must be used to construct improvements in a service area that is related to and serves the district.

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The owner or developer of the real property in an improvement district must disclose to a prospective purchaser of residential real property in the district that the property will be subject to an assessment under this legislation and the annual amount and duration of the assessments.

The legislation establishes provisions governing collective improvements. If a proposed improvement pertains to a school, such as new construction or additions to existing construction, then the improvement must be approved by the governing body of the school district prior to the creation of the improvement district. Bonds issued by counties or municipalities under this legislation do not count for the purposes of calculating the debt limitation imposed upon local governments by the South Carolina Constitution.

*STATUS: Having passed the House of Representatives and the Senate, H.4745 was ratified on June 10, 2008 (R.422) and became law without the Governor's signature on June 17.*

## **CONSUMER PROTECTION/SAFETY**

### **"FINANCIAL IDENTITY FRAUD AND IDENTITY THEFT PROTECTION ACT"**

The General Assembly approved legislation creating the "Consumer Identity Theft Protection Act." Highlights of the legislation include the following.

#### **Consumer Provisions**

The legislation requires address verification for credit card applications. Additionally, the legislation removes language requiring an issuer of a credit card to get parental consent prior to issuing a card to a person under the age of 21.

A consumer may place a freeze on his credit information. A consumer reporting agency cannot charge a fee for invoking a freeze, removing a freeze, temporarily lifting a freeze, or reinstating a freeze. Placing a freeze on a consumer's report does not prevent someone from being able to get information concerning criminal records; fraud prevention or detection; personal loss history; or employment, tenant, or individual background screening.

The legislation changes the definition of "personal identifying information" to make South Carolina's definition the same as the definition used by the majority of other states.

#### **Law Enforcement Provisions**

Local law enforcement must report an identity theft, if contacted by a suspected victim.

The State Law Enforcement Division is required to maintain an identity theft database.

#### **Business Provisions**



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The legislation prohibits a person from posting, printing, transmitting, selling, or exchanging a social security number or a portion that consists of six digits or more unless there is written authorization, there is a legitimate business or government purpose that provides a benefit, or for other specifically permitted reasons.

Businesses are restricted from printing the last five digits of a credit card number or the card expiration date on a receipt.

Businesses and state agencies that own or license computerized personal identifying information are required to disclose a breach of the security system should one be suspected.

A person conducting business in this State may notify consumers of a security breach by email or by telephone if those are the person's primary means of communication.

When a business disposes of a business record that contains personal identifying information, the business shall modify, by shredding, erasing, or other means, the personal identifying information to make it unreadable or undecipherable.

### **Judicial Remedies**

A victim may petition a circuit court for a judicial determination of innocence and an expungement of record.

It is unlawful for a person to obtain another's identity by rummaging through personal, household, or commercial garbage.

### **Consumer Reporting Agencies**

A consumer reporting agency must give notice to each creditor who uses a consumer report if the agency becomes aware that an application to a card issuer to open a new seller or lender credit account bears an address for the consumer that is different from the address in its file of the consumer.

A consumer reporting agency must remove all false information from a credit report, if the agency receives notice from the consumer to do so. If an agency violates this section, it is liable for three times the actual damages or \$5,000, whichever is greater. If the agency negligently violates this section, it is liable for actual damages or \$3,000 for each incident, whichever is greater.

*STATUS: The General Assembly approved S.453 (R.202), and the Governor signed the legislation into law on April 2, 2008 (Act No. 190).*

## **FIRE SPRINKLER SYSTEM TAX CREDITS AND EXEMPTIONS**

The General Assembly approved H.4470, a bill authorizing tax credits and exemptions to encourage the installation of fire sprinkler systems in commercial and residential

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structures. The legislation provides that a taxpayer who installs a fire sprinkler system in a commercial or residential structure is eligible for a credit against real property taxes levied by a local taxing entity equal to twenty-five percent of the direct expenses incurred (excluding any type of fee charged by the publicly or privately owned utility) if the local taxing entity has consented to the tax credit. In any year in which the local taxing entity consents to a tax credit, the taxpayer may also claim an income tax credit equal to the amount of this credit against real property taxes. All fire sprinkler system equipment installation on a commercial or residential structure is exempt from property taxes until there is an assessable transfer of interest. The legislation provides that the installation of a fire sprinkler system in a commercial or residential structure does not qualify as an addition or improvement for the purpose of determining property tax value if the utility and function of the structure remains unchanged. These tax credits and other provisions apply only when the installation of the fire sprinkler system is not required by law, regulation, or code. The legislation establishes provisions that prohibit a publicly or privately owned utility from imposing a tap fee, other fee, or a recurring maintenance fee of any nature for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system. The legislation also provides that neither the Fire Marshal nor a governing body of a county or municipality shall enforce that portion of either the International Fire Code or a nationally recognized fire code that prohibits natural cut trees from being located in places of worship which do not fall within the exceptions provided for structures that have approved automatic sprinkler systems

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installed in accordance with the International Fire Code or a nationally recognized fire code.

*STATUS: Having passed the House of Representatives and the Senate, H.4470 was ratified on June 5, 2008 (R.385). The Governor vetoed the legislation on June 11.*

## **GROUP CHILDCARE HOMES**

This legislation requires the owner or operator of a group childcare home and family childcare home in South Carolina who does not carry liability insurance to notify each enrolled child's parent or guardian of that fact no later than January 1, 2009. The owner or operator must obtain signed statements from each enrolled child's parent or guardian, indicating notice was received regarding the lack of liability insurance. The childcare facility must maintain a file of the signed statements for the period of time the child is enrolled. The parent or guardian of any new child enrolled after June 30, 2008, must receive this information and sign a statement at the time of enrollment. If a childcare facility has liability insurance that lapses or is cancelled the owner or operator must notify and obtain signed statements from the parents of the enrolled child no later than thirty days after the liability insurance lapses or is canceled.

The legislation also includes based background check along with the State and Federal fingerprints review and a Central Registry check for childcare facility employees.

A childcare facility may provisionally employ or provide provisionally caregiver services after a favorable name and date of birth based background check, along with an executed sworn statement that he or she has not been convicted of perpetrated abuse or neglect upon a child. A person provisionally employed must be under supervision of a non-provisionally employed person at all times when providing direct care to children. The provisional status must be repealed if the requests for the State Law Enforcement Division fingerprint review, the Federal Bureau of Investigation fingerprint review and the Central Registry check are not submitted by the end of the next business day after the person was employed. The results of the fingerprint-based background checks are valid and reviews are not required to be repeated unless a person is not employed or does not provide caregiver services for one year or longer. As a result, for provisional employment, the State Law Enforcement Division must complete the Central Registry check within two business days after receipt of the request. If an operator or a childcare violates the provisional requirements, for a first offense, the facility may not employ a person provisionally for the succeeding twelve months. For second and subsequent offense, the facility may not employ a person provisionally for twenty-four months. The penalty applies to any facility that may employ the director of the facility during the period of suspension.

An owner or operator of a childcare center or group childcare home, must notify and obtain signed statements from parents or guardians of each child

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enrolled that the facility may provisionally employ a person when an unexpected staff vacancy occurs.

*STATUS: Having passed the General Assembly, S.311 (R.299) was signed into law by the Governor on June 4, 2008 (Act No. 262).*

## **MISREPRESENTATION OF THE IDENTITY OF FOOD OR A FOOD PRODUCT AS A SOUTH CAROLINA PRODUCT**

Under this legislation, it is an unfair trade practice to knowingly and willfully misrepresent food or a food product if the food or food product purports to be or is represented to be a product of South Carolina but is the product of another state, country, or territory. This provision is not intended to conflict with the enforcement of criminal penalties or other provisions of law relating to the misrepresentation or adulteration of food or food products.

*STATUS: Having been approved by the General Assembly, H.3028 (R.319) was vetoed by the Governor on June 4, 2008. On June 5, the House of Representatives and Senate overrode the veto to allow the bill to become law (Act No. 277).*

## **“REDUCED CIGARETTE IGNITION PROPENSITY STANDARDS AND FIREFIGHTER PROTECTION ACT”**

The General Assembly approved H.4900, the “Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act”, which requires cigarettes sold in South Carolina to be manufactured so that they will extinguish themselves if left unattended, thereby reducing the risk they pose as potential fire hazards. The legislation provides that, in order to be sold in this State, cigarettes must undergo laboratory testing for ignition propensity, receive certification that they meet this legislation’s fire safety performance standards, and marked to show that they comply with these reduced ignition propensity standards. Manufacturers are required to pay a certification fee for each cigarette brand style to the State Fire Marshal to defray the costs of the legislation’s processing, testing, enforcement, and oversight activities. The fee is initially set at two hundred fifty dollars, but the State Fire Marshal is authorized to adjust the fee annually to ensure that actual costs are defrayed. Manufacturers are required to maintain copies of the reports of tests conducted on cigarettes for a period of three years, and must make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Civil penalties are established for noncompliant cigarette sales, false certifications, failure to meet reporting requirements, and other violations of the legislation. Cigarettes that have been sold or offered for sale that do not comply with the performance standards are subject to forfeiture and destruction. The Attorney General, the Department of Revenue, the State Fire Marshal, and other law enforcement personnel are provided authority to examine the books, papers, invoices, and other records related to cigarette sales in order to enforce the provisions of the legislation.

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*STATUS: Having passed the House of Representatives and the Senate, H.4900 was ratified on May 29, 2008 (R.333). On June 4, the Governor vetoed the legislation, and, on June 5, the House and Senate overrode the veto to allow the bill to become law.*

## **“TELEVISION PROGRAMMING PROTECTION ACT”**

The General Assembly approved S.598, the “Television Programming Protection Act.” This legislation requires a cable or video service provider that uses digital transmission technology to deliver its programming to block completely all video and audio on any channel that a subscriber has not purchased at no charge to the subscriber. A cable or video service provider that uses analog transmission technology to deliver its programming must notify its subscribers that it will, upon request, carry out such blocking at no charge to the subscriber. Within five days of receiving a subscriber’s request, the analog service provider must block all video and audio on any channel that the subscriber has not purchased. The time frames do not apply if compliance is not possible due to circumstances beyond the service provider’s control. The legislation provides that a cable or video service provider that intends to deliver channels to its subscribers on a promotional basis is required to give its subscribers advanced notice and inform them that, upon request, all video and audio on such channels can be completely blocked. Unless a subscriber makes such a request, a service provider may, on a promotional basis, deliver one or more channels not purchased by a subscriber. The legislation also establishes a protocol for rectifying instances where blocked channels are transmitted due to equipment failure.

*STATUS: Having passed the General Assembly, S.598 (R.197) became law without the Governor’s signature on February 28, 2008 (Act No. 182).*

## **UNAUTHORIZED USE OF A BANK NAME**

The General Assembly approved and the Governor signed into law S.964, legislation prohibiting the unauthorized use of a bank name. The legislation prohibits the use of the name or logo of a bank in any advertisements for financial products or services without the bank’s written consent. A violator is subject to a fine of not less than five hundred dollars and not more than one thousand dollars for each unauthorized use of a name or logo. Under the legislation, a bank may file an action to enjoin the unauthorized use of its name or logo. A court of competent jurisdiction may grant an injunction to restrain the wrongful use and may require the defendants to pay to the bank all profits derived from, and all damages suffered by, reason of the wrongful use of the name or logo, including costs and reasonable attorney’s fees.

*STATUS: Having passed the General Assembly, S.964 (R.191) was signed into law by the Governor on February 19, 2008 (Act No. 181).*

# **COURTS/CRIMINAL JUSTICE AND LAW ENFORCEMENT**

## **“ACCESS TO JUSTICE POST-CONVICTION DNA TESTING ACT” AND THE “PRESERVATION OF EVIDENCE ACT” (THE INNOCENCE PROJECT LEGISLATION)**

### **“Access to Justice Post-Conviction DNA Testing Act”**

As passed by the Senate, this legislation applies only to certain criminal offenses, including, but not limited to, murder and criminal sexual conduct. This legislation allows a person who has pled not guilty to an applicable offense, was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts that he is innocent of the offense to apply for forensic DNA testing of his DNA and any physical evidence or biological evidence related to his conviction or adjudication. The application must be made no later than seven years from the date of sentencing. The application must be made on such a form as prescribed by the Supreme Court, and the legislation outlines what information should be included in the application. The application must be verified by the applicant and filed under the original indictment number or petition with the clerk of court of the general sessions court or family court in which the conviction or adjudication took place. The clerk must forward the application to the solicitor, and the solicitor must notify the Attorney General and the custodian of the evidence. The victim must receive notification. The solicitor must respond to the application within 90 days. The application must be heard in, and before a judge of, the general sessions court or family court in which the conviction or adjudication took place. If DNA testing is ordered, the applicant must pay the cost of that testing unless the applicant is indigent. These provisions do not prevent relevant parties from consenting to and conducting post-DNA testing by agreement. The applicant, Attorney General or solicitor may use the results of the DNA testing in any post-conviction proceeding or trial.

### **“Preservation of Evidence Act”**

As passed by the Senate, this legislation requires a custodian of evidence to preserve all physical evidence and biological evidence related to the conviction or adjudication of a person for certain criminal offenses. The legislation includes timeframes for which the evidence must be preserved. Under certain circumstances, the custodian of evidence may petition the general session court or family court for an order allowing for the disposition of the physical evidence or biological evidence.

A person who willfully and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to these provisions with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than \$1,000 dollars for a first offense, and not more than \$5,000 dollars or imprisoned for not more than one year, or both, for each subsequent violation.

*The House of Representatives amended the legislation on June 5, 2008, to among other things include the provisions of the “Unidentified Human Remains DNA Database Act.” The Senate subsequently amended the legislation on the same day to include the provisions of the “South Carolina Protection From Violence Against Women And Children” (DNA Samples For Inclusion In The State DNA Database).*

*STATUS: Having passed the Senate and House of Representatives in differing versions, a conference committee has been appointed to work on differences of the bodies in S.429.*

## **ADMINISTRATIVE LAW COURT HEARINGS, PROCEEDINGS AND STAYS**

Unless otherwise provided by statute, the standard of proof in a contested case is preponderance of the evidence. The South Carolina Rules of Evidence apply in all contested case proceedings before the Administrative Law Court (ALC). Notice of the contested case hearing must be issued in accordance with the rules of procedure of the ALC.

A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge shall render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the ALC, must be in the same manner as prescribed in

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Section 1-23-380(A) for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1-23-610.

A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the ALC. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

After a contested case is initiated before the ALC, a party may move before the presiding administrative law judge to lift the stay imposed. Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within 30 days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than 15 business days after the hearing is concluded.

Except as otherwise provided, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

*STATUS: Having been approved by the General Assembly, H.3575 (R.413) was signed into law by the Governor on June 16, 2008.*



## **ASSAULT AND BATTERY OFFENSES AGAINST SPORTS OFFICIALS AND COACHES**

The General Assembly approved legislation authorizing magistrates to punish by fine not exceeding \$1,000 dollars or imprisonment for a term not exceeding 60 days, or both, all assaults and batteries against sports officials and coaches. This penalty is applicable when in committing an assault and battery, the offender knows the individual assaulted to be a sports official or coach at any level of competition. Also, the act causing the assault and battery to the sports official or coach must have occurred within an athletic facility or an indoor or outdoor playing field or within the immediate vicinity of the athletic facility or an indoor or outdoor playing field at which the sports official or coach was an active participant in the athletic contests held at the athletic facility.

*STATUS: Having been approved by the Senate and House of Representatives, S.577 was ratified on June 10, 2008 (R.403). The Governor vetoed the legislation on June 16.*

## **CRIMINAL DOMESTIC VIOLENCE CONVICTIONS IN OTHER STATES**

This legislation provides that certain criminal domestic violence convictions in other states are to be considered when determining a previous conviction for purposes of enhancing the penalty.

*STATUS: Having been approved by the General Assembly, H.3058 (R.320) was signed into law by the Governor on June 4, 2008 (Act No. 255).*

## **CRIMINAL DOMESTIC VIOLENCE REVISIONS**

### **Trespass on the Grounds or Structure of a Domestic Violence Shelter or the Domestic Violence Shelter's Administrative Offices**

This legislation provides that it is unlawful for a person who has been charged with or convicted of a violation of criminal domestic violence or criminal domestic violence of a high and aggravated nature or who is subject to an order of protection, or who is subject to a restraining order to enter or remain upon the grounds or structure of a domestic violence shelter in which the person's household member resides or the domestic violence shelter's administrative offices.

The domestic violence shelter must post signs at conspicuous places on the grounds of the domestic violence shelter and the domestic violence shelter's administrative offices which, at a minimum, read substantially as follows: 'NO TRESPASSING VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES'.

This provision does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence shelter or the domestic violence shelter's administrative offices.

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A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than \$3,000 dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than \$5,000 dollars or imprisoned for not more than five years, or both.

Restraining orders and orders of protection must notify a person about this provision. Also, a defendant at a bond hearing must receive written notification about this provision; the court shall provide the person with opportunity to sign the notice evidencing the person's acknowledgement of having received and read the notice.

**Warrantless Arrest or Search**

Relating to a warrantless arrest or search when a person is believed to have committed a criminal domestic violence offense, this legislation clarifies that a warrantless arrest or search may be undertaken by law enforcement when there is probable cause to believe a violation has occurred.

*STATUS: Having been approved by the General Assembly, H.5001 (R.396) was signed into law by the Governor on June 11, 2008.*

**CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE  
REVISIONS (PROHIBITING SCHOOL EMPLOYEE/STUDENT  
RELATIONS)**

As passed by the House of Representatives, this legislation provides that criminal sexual conduct in the third degree includes situations where the offender is a person affiliated with a public or private secondary school in an official capacity but is not a student enrolled in the public or private secondary school and the victim is a person under the age of 19 who is currently enrolled in a public or private secondary school at which the actor works or has supervisory authority and aggravated force or aggravated coercion was not used to accomplish the sexual battery. An exception is provided for a person affiliated with a public or private secondary school who is lawfully married to the student enrolled in the school at the time of the act. The legislation further provides that a person who commits criminal sexual conduct in the third degree is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

*The Senate amended the legislation to provide a definition section. Under the Senate's amendment if a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is 16 or 17 years of age and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years. If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is 18 years of age or older and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 dollars or imprisoned for 30 days, or both.*

*STATUS: Having passed the House and Senate in differing versions, a conference committee has been appointed to address differences of the bodies in H.3715.*

## **DRIVING UNDER THE INFLUENCE REVISIONS**

The General Assembly approved legislation revising South Carolina's driving under the influence laws. Highlights of the legislation include the following.

### **Penalties**

The legislation enhances penalties for the offenses of driving under the influence (DUI) and driving with an unlawful alcohol concentration (DWUAC). Under the legislation, for DUI or DWUAC when a person's blood alcohol concentration is 0.08%-0.09%: a first offense is subject to a fine of \$400 dollars or imprisonment for 48 hours-30 days; a second offense is subject to a fine of \$2,100-\$5,100 dollars and imprisonment for five days-one year; a third offense is subject to a fine of \$3,800-\$6,300 dollars and imprisonment for 60 days-three years; and, a fourth or subsequent offense is subject to imprisonment for one-five years. For DWUAC when the blood alcohol concentration is 0.10%-0.15%: a first offense is subject to a fine of \$500 dollars or imprisonment for 72 hours-30 days; a second offense is subject to a fine of \$2,500-\$5,500 dollars and imprisonment for 30 days- two years; a third offense is subject to a fine of \$5,000-\$7,500 dollars and imprisonment for 90 days-four years; and, a fourth or subsequent offense is subject to imprisonment for two-six years. For DWUAC when the blood alcohol concentration is 0.16% or greater: a first offense is subject to a fine of \$1,000 dollars or imprisonment for 30-90 days; a second offense is subject to a fine of \$3,500-\$6,500 dollars and imprisonment for 90 days-three years; a third offense is subject to a fine of \$7,500-\$10,000 dollars and imprisonment for 6 months-five years; and, a fourth or subsequent offense is subject to imprisonment for three-seven years.

The legislation establishes provisions under which individuals convicted of DUI or DWUAC offenses are required to complete successfully a drug and alcohol treatment plan.

If convicted of DUI or DWUAC, an individual must pay \$25 dollars to cover the cost of the blood alcohol concentration (BAC) test.

DWUAC is added to the list of offenses that are not eligible for pre-trial intervention (PTI).

DWUAC is added to the list of offenses eligible for charging a person with child endangerment.

### **Driver's License Provisions**

Under the legislation, the Department of Motor Vehicles (DMV) must suspend the driver's license of a person who is convicted of a felony DUI for the period of incarceration plus three years when great bodily injury occurs and five years when a death occurs.

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If a person under the age of 21 refuses to submit to a BAC test, the DMV must suspend the person's license or permit, or deny the issuance of a license or permit for a period of 6 months for a first offense, and one year for any subsequent offense.

If a person under the age of 21 submits to a BAC test and the result indicates a BAC of 0.02% or more, the DMV must suspend the person's license or permit, or deny the issuance of a license or permit to the person for a period of three months for a first offense, and six months for any subsequent offense.

If a person 21 or older refuses to submit to a BAC test, the DMV must suspend the person's license or permit, or deny the issuance of a license or permit to the person for a period of six months for a first offense, nine months for a second offense, 12 months for a third offense, and 15 months for a fourth or subsequent offense.

If a person 21 or older submits to a BAC test and the result indicates a BAC of 0.15% or more, the DMV must suspend the person's license or permit, or deny the issuance of a license or permit to the person for a period of one month for a first offense, two months for a second offense, three months for a third offense, and four months for a fourth or subsequent offense.

### **Law Enforcement Provisions**

The legislation provides that a law enforcement officer is only required to advise a person being investigated for DUI or DWUAC of the person's Miranda rights at the time of arrest.

Under the legislation, the refusal to take a field sobriety test by a person being investigated for DUI or DWUAC does not constitute disobeying a law enforcement command.

The legislation provides that BAC test may not be administered on a person being investigated DUI or DWUAC unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy and verbally informed of the person's rights regarding the BAC test.

*STATUS: The General Assembly approved H.3496 (R.234), and the Governor signed the legislation into law on April 15, 2008 (Act No. 201).*

## **"FINANCIAL IDENTITY FRAUD AND IDENTITY THEFT PROTECTION ACT"**

See summary under Consumer Protection/Safety

## **GANG INITIATIVES**

### **New Gang Prevention Study Committee**

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The General Assembly approved a joint resolution to create a new gang prevention study committee to continue the work of the initial Gang Prevention Study Committee to assess and combat the ongoing gang problem by bringing together state agencies to coordinate gang reduction plans and make further recommendations addressing gang-related activity in South Carolina.

**Gang Awareness Month**

The General Assembly approved a concurrent resolution to declare the month of October 2008 as Gang Awareness Month in South Carolina in order to raise public awareness of this increasing problem in our State.

*STATUS: The General Assembly approved H.4630 (R.201) relating to the study committee, and the Governor signed the legislation on February 27, 2008.*

*The General Assembly adopted H.5192, a concurrent resolution declaring October 2008 as Gang Awareness Month on June 4, 2008.*

**INHALED ALCOHOL PROHIBITION**

The General Assembly approved legislation which makes it unlawful for a person to use, offer for use, purchase, offer to purchase, sell, offer to sell, or possess an alcohol without liquid device. 'Alcohol without liquid device' means a device, machine, apparatus, or appliance that is designed or marketed for the purpose of mixing alcohol with pure or diluted oxygen, or another gas, to produce an alcoholic vapor that an individual can inhale or snort. Penalties are provided for violations. The bill does include exceptions.

*STATUS: Having been approved by the General Assembly, S.96 (R.400) became law without the Governor's signature on June 17, 2008.*

**RESTRICTIONS ON WHERE A SEX OFFENDER MAY RESIDE**

This legislation provides that it is unlawful for sex offenders who have been convicted of certain offenses to reside within 1,000 feet of a school, daycare center, children's recreational facility, park, or public playground. If a law enforcement agency determines that a sex offender is in violation of this provision, a local law enforcement officer must, within 30 days, notify the sex offender of his violation. The sex offender must be provided a list of areas in which the sex offender is not permitted to reside, and the sex offender must be given 30 days to vacate his residence. If the sex offender fails to vacate his residence within that time frame, the legislation includes criminal penalties. There are graduated penalties for subsequent violations. The legislation also provides that school districts must make certain information available to parents and guardians regarding any sex offenders that reside within 1,000 feet of a school bus stop. The legislation includes grandfather provisions and exceptions. Local governments may not enact an ordinance that contains penalties that exceed or are less lenient than the penalties contained in this legislation.

*STATUS: Having been approved by the General Assembly, H.3094 (R.410) was signed into law by the Governor on June 16, 2008.*

## **SCHOOL RESOURCE OFFICERS MAY ISSUE COURTESY SUMMONS FOR MISDEMEANOR OFFENSES**

See summary under Education

## **“SOUTH CAROLINA PROTECTION FROM VIOLENCE AGAINST WOMEN AND CHILDREN” (DNA SAMPLES FOR INCLUSION IN THE STATE DNA DATABASE)**

This legislation provides for the expansion of the State DNA Database. As passed by the Senate, this legislation provides that a person must provide a DNA sample, either saliva or tissue sample, following a lawful custodial arrest, direct indictment, or courtesy summons for a felony offense that is punishable by a sentence of five years or more, or eavesdropping, or peeping, or stalking. The legislation outlines procedures whereby law enforcement may take the sample. The State Law Enforcement Agency (SLED) must coordinate with other law enforcement agencies to prevent duplications of DNA samples. If the charges pending against the person who has been arrested have been nolle prossed or dismissed or reduced below the requirement for inclusion in the State DNA Database, then the person must have his DNA record and profile expunged from the State DNA Database. The solicitor must notify the person and SLED in writing of the person's eligibility to have his record expunged, and SLED must begin the expungement procedure. The cost of collecting and processing a DNA sample must be paid by the general fund of the State. A fee of \$250 dollars must be assessed at the time of sentencing against persons convicted or, pleading guilty or no contest to, or forfeiting bond for the crime for which they were arrested. The legislation also increases criminal penalties for the willful disclosure or authorization of disclosure of DNA information to a person or agency not entitled to receive the information.

*STATUS: The Senate added these provisions to S.429 on June 5, 2008. Having passed the Senate and House of Representatives in differing versions, a conference committee has been appointed to work out differences of the bodies in S.429.*

## **SOUTH CAROLINA SENTENCING REFORM COMMISSION**

This legislation establishes a Sentencing Reform Commission. The primary duty of the commission is to prepare a comprehensive report that reviews and recommends: (1) appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year is allowed; (2) maintaining, amending, or abolishing the current parole system; and (3) guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate. The purpose of the report is to enable the General Assembly to consider the commission's findings and determine whether state laws should be amended. In making its recommendations concerning guidelines, the commission must consider current sentence and release practices and correctional resources including, but not limited to, the capacities of local and state

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correctional facilities. The commission must deliver its report and recommendations to the chairman of the Senate Judiciary Committee and the chairman of the House Judiciary Committee no later than June 1, 2009, and the commission shall terminate when the report is made.

*STATUS: Having been approved by the General Assembly, S.144 (R.339) was signed into law by the Governor on June 11, 2008.*

## **"TRAFFIC EDUCATION PROGRAM ACT"**

The legislation authorizes each circuit solicitor to establish as part of the Pretrial Intervention Program a traffic education program for persons who commit traffic-related offenses that are punishable only by a fine and loss of four points or less and that have not resulted in death or serious bodily injury to another person. A person may be considered for a traffic education program only if he has no prior traffic-related offenses on his record, and a person may not participate in a traffic education program more than once. The program must include both a community service and an educational component. When a person successfully completes a traffic education program, the governmental agency administering the program shall effect a noncriminal disposition of the traffic-related offense, and there must be no record maintained of the traffic-related offense except by the appropriate traffic education program in order to ensure that a person does not benefit from a traffic education program more than once. If a person violates the conditions of a traffic education program or receives a subsequent traffic violation during the six months following the issuance of the ticket for which he has entered the traffic education program, he must be terminated from the program and the traffic-related offense must be reinstated. The legislation establishes program participation fees and provides for how these fees are to be distributed.

*STATUS: Having been approved by the General Assembly, H.3572 (R.186) was signed into law by the Governor on February 4, 2008 (Act No. 176).*

## **"UNIDENTIFIED HUMAN REMAINS DNA DATABASE ACT"**

As passed by the House of Representatives, this legislation allows family members of a missing person to submit DNA samples to the State Law Enforcement Division (SLED). If the person is missing 30 days after a missing person report has been submitted to the Missing Person Information Center, SLED must conduct DNA identification, typing, and testing on the family members' samples. SLED may, within its discretion, conduct DNA identification, typing, and testing on the family members' samples prior to 30 days if SLED determines that such activity is necessary. If SLED does not have the technology necessary for a particular method of DNA identification, typing, or testing, SLED may submit the DNA samples to a Combined DNA Indexing System (CODIS) laboratory that has the appropriate technology. The results of the identification, typing, and testing must be entered into CODIS.

Upon notification by the Medical University of South Carolina (MUSC) or other facility preserving the body of an unidentified person that the body remains unidentified after 30

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days, SLED must conduct DNA identification, typing, and testing of the unidentified person's tissue and fluid samples. SLED may, within its discretion, conduct prior to 30 days if SLED determines that such activity is necessary. The results of the identification, typing, and testing must be entered into the CODIS. A coroner performing an autopsy on an unidentified body must obtain tissue and fluid samples suitable for DNA identification, typing, and testing. The samples must be transmitted to SLED. If the body cannot be identified through reasonable efforts, the coroner must forward the body to MUSC or other suitable facility for preservation. If the body remains unidentified 30 days after the coroner forwarded the body, MUSC or other facility preserving the body must immediately notify SLED. If the body has not been identified within 30 days after SLED has entered the unidentified person's DNA profile into CODIS, MUSC may retain possession of the body for its use and benefit or return the body to the coroner of the county where death occurred for disposition as provided by law. A facility other than MUSC utilized by the coroner for storage of an unidentified body may dispose of the body as provided by law or return the body to the coroner of the county where death occurred for disposition.

*STATUS: The House of Representatives added these provisions to S.429 on June 4, 2008. Having passed the Senate and House in differing versions, a conference committee has been appointed to work on differences of the bodies in S.429.*

## **UNLAWFUL PURCHASE OF COPPER AND OTHER NONFERROUS METALS**

### **Definition of Nonferrous Metals**

The term 'nonferrous metals' means metals not containing significant quantities of iron or steel, including copper wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, and stainless steel beer kegs or containers.

These provisions do not apply to the purchase or sale of aluminum cans.

### **Unlawful Purchase of Nonferrous Metals**

This legislation outlines additional information that purchasers of nonferrous metals are required to keep regarding sellers.

It is unlawful to purchase nonferrous metals in any amount from a person who is not a holder of a retail license or an authorized wholesaler unless the purchaser is a secondary metals recycler and obtains and can verify the address of the seller. A secondary metals recycler shall maintain a record containing the date of the purchase, name and address of the seller, a photocopy of the seller's identification, the license plate of the seller's motor vehicle, the seller's photograph, weight or length, and size or other description of the nonferrous metals purchased, amount paid for it, and a signed statement from the seller stating that he is the rightful owner or is entitled to sell the nonferrous metals being sold. These records must be maintained for two years from the date of the purchase. Further, a secondary metals recycler may only purchase nonferrous metals for cash consideration from a fixed location.



### **Law Enforcement May Issue a Hold Notice**

The legislation includes provisions allowing for law enforcement to issue a hold notice to a secondary metals recycler when law enforcement has reasonable cause to believe that any item of nonferrous metal in possession of a secondary metals recycler has been stolen.

### **Local Government Preemption**

This legislation preempts local ordinances and regulations governing the purchase or sale of nonferrous metals in any amount, except to the extent that such ordinances pertain to zoning or business license fees. This legislation does not preempt the ability of a political subdivision to enact ordinances or regulations pertaining to zoning or business license fees. Political subdivisions may not enact ordinances or regulations more restrictive than those contained in this legislation.

### **Unlawful Injury to Real Property for the Purpose of Obtaining Nonferrous Metals**

It is unlawful for a person to willfully and maliciously cut, mutilate, deface, or otherwise injure any real property, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount. Criminal penalties are provided for violations. The penalties are graduated depending upon the dollar amount of the property damage. Also, a person who violates the provisions and the violation results in the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than 30 years.

### **Civil Protections for Landowners**

A public or private landowner or a possessor of land is not civilly liable to a person who is injured during the theft or attempted theft, by the person or a third party, of nonferrous metals in any amount.

A public or private landowner or a possessor of land is not civilly liable for a person's injuries caused by a dangerous condition created as a result of the theft or attempted theft of nonferrous metals in any amount, of the landowner or the possessor when the landowner or possessor did not know and could not have reasonably known of the dangerous condition.

*STATUS: Having been approved by the General Assembly, H.4930 (R.335) was signed into law by the Governor on June 4, 2008 (Act No. 260).*

## **EDUCATION**

### **AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM FOR HIGH SCHOOLS**

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Subject to appropriations by the General Assembly, each school district shall develop and implement an automated external defibrillator program at every high school. It requires an operational automatic external defibrillator on the grounds of the high school. The school superintendent, or his or her designee, shall determine who is reasonably expected to use the device and obtain appropriate training. In addition, guidelines are to be established for periodic inspections and annual maintenance of these devices. Any person or entity acting in good faith shall be immune from civil liability for the use of an automated external defibrillator unless the person was grossly negligent in the use.

*STATUS: Having passed the General Assembly, H.3723 (R.322) was vetoed by the Governor on June 4, 2008. The House of Representatives and Senate overrode the veto on June 5, 2008 (Act No. 278).*

## **CHARTER SCHOOLS REVISIONS**

### **Charters for Ten Years**

This legislation provides that a charter must be approved or renewed for a period of ten school years. A charter school may terminate its contract with a sponsor before the ten-year term of contract if all parties under the contract with the charter school agree to the dissolution.

### **Revised Appeal Procedures**

This legislation provides that an applicant may appeal the decision to the Administrative Law Court (ALC). Likewise, local school boards of trustees may appeal decisions to approve applications made by the South Carolina Public Charter School District to the ALC. A decision to revoke or not to renew a charter school may be appealed to the ALC. Previously, such appeals were made to the State Board of Education.

### **Admission Decisions**

A charter school may give enrollment priority to a sibling of a pupil already enrolled or previously enrolled, children of a charter school employee, and children of the charter committee, if such priority enrollment does not constitute more than twenty percent of the enrollment of the charter school.

*STATUS: Having been approved by the General Assembly, H.4980 (R.280) was signed into law by the Governor on May 21, 2008 (Act No. 239).*

## **CONFIDENTIALITY OF SEXUALLY TRANSMITTED DISEASE RECORDS**

See summary under Family/Health

## **CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE REVISIONS (PROHIBITING SCHOOL EMPLOYEE/STUDENT RELATIONS)**

See summary under Courts/Criminal Justice and Law Enforcement

## **EDUCATION ACCOUNTABILITY ACT REVISIONS**

Highlights of the legislation include the following.

### **End-of-Year Accountability Assessments (grades 3-8)**

This legislation eliminates the Palmetto Achievement Challenge Test (PACT). The name of the new test is not specified. To facilitate the reporting of strand level information and the reporting of student scores prior to the beginning of the next school year, multiple choice items must be administered as close to the end of the school year as possible and the writing assessment must be administered earlier in the school year. Reports from the new test include strand information. The new test will be first administered in 2009. The legislation also codifies language providing that a student's score on an end-of-year assessment may not be the sole criterion for placing the student on academic probation, retaining him in his current grade, or requiring him to attend summer school.

### **Subjects Tested for Accountability**

The subject areas tested for accountability have not changed with this legislation. Subjects tested for accountability are English/language arts, mathematics, science and social studies.

### **Formative Assessments**

"Formative assessment" means assessments used within the school year to analyze general strengths and weaknesses in learning and instruction, to understand the performance of students individually and across categories, to adapt instruction to meet students' needs, and to consider placement and planning for the next grade level. Data and performance from the formative assessments must not be used in the calculation of school or district ratings.

Under the legislation, the State Board of Education (SBE) shall create a statewide adoption list of formative assessments for grades one through nine aligned with the state content standards in English/language arts and mathematics that satisfies professional measurement standards in accordance with criteria jointly determined by the Education Oversight Committee (EOC) and the State Department of Education. The currently required first and second grade reading assessment is eliminated.

For use beginning with the 2009-2010 school year, subject to appropriations by the General Assembly for the assessments, local districts must be allocated resources to select and administer formative assessments from the statewide adoption list to use to improve student performance in accordance with district improvement plans.

### **Assessment Data**

Currently, there is no codified deadline for student assessment results to be provided. Beginning with the 2010 Assessment Administration, this legislation provides that assessment results on individual students and schools are due by August 1.

### **Academic Plans**

The legislation eliminates provisions for individual student academic plans, parent conferences, and district level reviews for students in grades three through eight lacking the skills to perform at current grade level.

### **Student Performance Levels**

Currently, student performance levels are not codified, but under current practice there are four levels: advanced, proficient, basic, and below basic. This legislation provides for three student performance levels: Exemplary (demonstrated exemplary performance in meeting grade level standard), Met (met grade level standard), and Not Met (did not meet grade level standard). For purposes of reporting as required by federal statute, proficiency includes students performing at Met or Exemplary.

### **School/District Performance Levels**

The legislation revises the existing performance levels of excellent, good, average, below average, and unsatisfactory. Under the legislation, the performance levels are excellent, good, average, below average and school/district at-risk. Also, graduation rates must be used as an additional accountability measure for high schools and school districts.

### **State and Federal Level Accountability Reporting Levels**

Current practice provides for separate levels for state and federal accountability reporting. This legislation provides for the same levels for state and federal accountability reporting.

### **Annual School and District Report Cards**

This legislation directs the EOC, working with the SBE, to establish a comprehensive annual report card and an executive summary of the report card. The comprehensive report card must be in a reader-friendly format, using graphics whenever possible, be published on the state, district, and school website, and upon request, printed by the school districts. This legislation provides that annual report cards must meet federal report card requirements. This legislation further provides that district report cards will include the state's National Assessment of Educational Progress (NAEP) scores as well as scores of the nation. NAEP is the only nationally representative and continuing assessment of what America's students know and can do in various subject areas.

### **Performance Awards**

Currently, there are two performance awards: Palmetto Gold and Palmetto Silver. In addition to these two awards, this legislation provides for a closing the achievement gap

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award for schools making substantial progress in closing the achievement gap between disaggregated groups.

**Technical Assistance**

The legislation codifies flexibility currently provided through several budget provisos.

**Principal's Narrative Report**

Currently, there is no codified date for the report. This legislation provides that the report will be written after the principal reviews the school's performance on the statewide assessments. Under this legislation, the district superintendent or appropriate body for a local charter school must review the narrative.

**District and School Performance**

Currently, district and school performance are referred to as absolute and improvement. Under this legislation, district and school performance are referred to as absolute and growth.

**Cyclical Review of the Accountability System**

Beginning in 2013, the EOC, working with the SBE and a broad-based group of stakeholders selected by the EOC, shall conduct a comprehensive cyclical review of the accountability system at least every five years and provide the General Assembly with a report of findings and recommendations.

*STATUS: Having been approved by the General Assembly, H.4662 (R.330) became law without the Governor's signature on June 5, 2008 (Act No. 282).*

**IN-STATE TUITION RETAINED AT STATE'S HIGHER EDUCATION INSTITUTIONS FOLLOWING MILITARY DEPLOYMENT OR REASSIGNMENT**

See summary under Military

**LIGHTRAIL CONSORTIUM**

The General Assembly approved H.4953, a bill establishing the South Carolina LightRail Consortium to manage access to a high speed, high bandwidth fiber optic communications network for research and clinical work conducted by the State's institutions of higher learning. Academic institutions that are members of the consortium along with those who have formal documented partnerships with consortium members are afforded access to the LightRail, a fiber optic communications grid network that carries high volumes of data at high speed allowing faculty members at participating institutions in different locations to collaborate in real time. Clemson University, the Medical University of South Carolina, and the University of South Carolina in Columbia are the three charter member institutions of the South Carolina LightRail Consortium. The consortium is governed by a six-member board of directors consisting of two representatives each from the three member institutions to be appointed by the

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respective university presidents and to serve at their pleasure. The consortium must be chaired by a member of the board of directors from each member institution on a rotating basis among all institutions for a term of two years. The consortium is charged with establishing guidelines governing access to South Carolina's LightRail and conducting annual reviews regarding its use. The legislation specifies that South Carolina's LightRail network is not to be used for commercial purposes and is not to compete with the commercial communications or information offerings of private sector participants.

*STATUS: Having passed the House of Representatives and the Senate, H.4953 was ratified on June 10, 2008 (R.428) and became law without the Governor's signature on June 17.*

**QUALIFICATIONS FOR ATTENDANCE AT PUBLIC SCHOOLS  
WHEN CHILD'S PARENT(S) OR LEGAL GUARDIAN(S) IS IN THE  
MILITARY**

See summary under Military

**RESEARCH CENTERS OF ECONOMIC EXCELLENCE  
PROGRAM EXTENSION**

See summary under Business/Economic Development

**SCHOOL RESOURCE OFFICERS MAY ISSUE COURTESY  
SUMMONS FOR MISDEMEANOR OFFENSES**

In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrate court within 24 hours of his arrest.

*STATUS: Having been approved by the General Assembly, S.1221 (R.314) was signed into law by the Governor on June 4, 2008 (Act No. 267).*

**STUDENT TRANSFERS AND ELIGIBILITY TO PARTICIPATE IN  
INTERSCHOLASTIC ACTIVITIES**

The General Assembly approved legislation allowing a high school student who is the victim of physical abuse, harassment, or stalking by a classmate during school hours or otherwise resulting in a restraining order being granted against the classmate by a court of competent jurisdiction to transfer with the consent of the student's school district to another high school within or out of the district within 30 school days of the restraining order being violated, without any loss of eligibility to participate in interscholastic activities at the school to which the student transfers.

*STATUS: Having been approved by the General Assembly, H.4758 (R.387) was signed into law by the Governor on June 11, 2008 (Act No. 293).*

## **ELECTIONS**

### **BALLOT STANDARDS AND SPECIFICATIONS (FUSION VOTING)**

As passed by the House of Representatives, this legislation provides that the name of each candidate shall appear no more than once on the ballot. If a candidate has been nominated by multiple parties or petitions, the legislation further provides that the name of each party or petition nominating the candidate must be listed under the candidate's name.

*STATUS: Having passed the House of Representatives and Senate in differing versions, a conference committee has been appointed to address differences of the bodies in S.913.*

### **MINOR CHILDREN OF A QUALIFIED ELECTOR MAY ACCOMPANY THE QUALIFIED ELECTOR IN THE VOTING BOOTH**

The General Assembly approved legislation allowing minor children of a qualified elector to accompany the qualified elector in the voting booth while he is casting his ballot. The qualified elector shall attest that the persons accompanying him are the minor children of the elector.

*STATUS: Having been approved by the General Assembly, S.14 (R.236) was signed into law by the Governor on May 14, 2008 (Act No. 205).*

### **PERSONS OFFERING FOR OR HOLDING PUBLIC OFFICE SHOULD ADHERE TO A VOLUNTARY CODE OF ETHICS AND PROFESSIONAL CONDUCT**

The House of Representatives adopted a resolution expressing the belief of its Members that persons offering for or holding public office should adhere to a voluntary code of ethics and professional conduct that they should follow during their term of public service.

*STATUS: The House of Representatives adopted H.5137, a House Resolution, on May 28, 2008.*

# ENERGY/CONSERVATION

## ENERGY EFFICIENT MANUFACTURED HOMES INCENTIVES

The General Assembly approved **S.1141**, a bill establishing incentives for energy efficient manufactured homes. The legislation establishes the Energy Efficient Manufactured Homes Incentive Program to allow an individual who purchases a manufactured home that meets energy saving efficiency standards to receive a nonrefundable income tax credit equal to seven hundred fifty dollars. The credit may be claimed beginning July 1, 2009, and no later than July 1, 2019. The legislation also provides that, from July 1, 2009, to July 1, 2019, a manufactured home is exempt from any sales tax above the maximum tax allowed for energy efficient manufactured homes if it has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.

*STATUS: Having passed the Senate and the House of Representatives, S.1141 was ratified on June 5, 2008 (R.355). The Governor vetoed the legislation on June 11.*



## FLEET MANAGEMENT PROGRAM

This legislation seeks to improve environmental quality in this state by decreasing the discharge of pollutants. In addition the legislation outlines that a preference in purchasing state motor vehicles must be given to hybrid, plug-in hybrid, bio-diesel, hydrogen, fuel cell, or flex-fuel vehicles when the performance, quality and anticipated life-cycle costs are comparable to other available motor vehicles.

*STATUS: Having passed the General Assembly, S.368 (R.230) became law without the Governor's signature on April 17, 2008 (Act No. 203).*

## IDLING RESTRICTIONS FOR COMMERCIAL DIESEL VEHICLES

The General Assembly approved legislation prohibiting an operator of a commercial diesel vehicle from allowing a vehicle to idle for more than ten minutes in any 60-minute period. The legislation includes numerous exceptions. The State Transport Police Division of the Department of Public Safety (DPS) is responsible for enforcement. Violations are nonmoving traffic offenses punishable by a warning ticket for an offense that occurs between July 1, 2008, to July 1, 2009, or a fine of \$75 dollars for each offense that occurs after July 1, 2009. Fines may be paid directly to DPS, or an individual may request a hearing in magistrates court. Magistrates court has jurisdiction over all contested violations. Failure to pay fines may result in driver's license suspension. Fifty dollars of each fine must be credited to the Diesel Idling Reduction Fund, and the monies in this fund must be used to cover costs associated with the idling awareness program operated by the Department of Health and Environmental Control. The legislation supercedes and preempts any ordinance enacted by a local political subdivision purporting to regulate idling on commercial diesel vehicles.

*STATUS: Having been approved by the General Assembly H.3853 (R.275) became law without the Governor's signature on May 22, 2008 (Act No. 234).*

## INCOME TAX CREDIT FOR SMALL HYDROPOWER SYSTEMS

The General Assembly approved S.1141, which expands the income tax credit currently allowed for the purchase and installation of a solar energy system so that the tax credit also applies to the purchase and installation of a small hydropower system. The legislation provides criteria for small hydropower systems.

*STATUS: Having passed the Senate and the House of Representatives, S.1141 was ratified on June 5, 2008 (R.355). The Governor vetoed the legislation on June 11.*

## NET METERING REPORT

The General Assembly approved H.3395, a joint resolution providing for a report on net metering programs at the State's electric utilities. Net metering is a means of calculating

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the energy that is consumed and produced at facilities equipped with renewable energy generators such as solar panels or wind turbines. The legislation provides that the South Carolina Energy Office and the Office of Regulatory Staff, not later than January 1, 2009, shall provide a report to the General Assembly that recommends process and procedures for establishing net metering programs at all distribution electric utilities in South Carolina, including investor-owned electric utilities and the South Carolina Public Service Authority. The report must consider net metering requirements of adjacent states, and make recommendations that facilitate interstate uniformity for utilities that serve both South Carolina and a neighboring state. The report's recommendations must be consistent with requirements of the federal Energy Policy Act. The report must also consider the need to facilitate consistency with Green Power electricity purchase programs operating in South Carolina. In preparing the net metering report, the South Carolina Energy Office and the Office of Regulatory Staff shall consult with all affected electric utilities, the State Consumer Advocate, representatives of environmental interests, and the South Carolina Energy Advisory Committee.

*STATUS: Having passed the House of Representatives and the Senate, H.3395 was ratified on May 8, 2008, (R.247) and was signed into law by the Governor on May 13.*

## **NEW ENERGY CONSERVATION GOALS FOR STATE AGENCIES**

The legislation establishes new energy conservation goals for state agencies. For buildings in use on July 1, 2008, the legislation establishes a goal of reducing energy consumption by at least one percent annually for five consecutive years. The plan also must have a goal of ultimately reducing energy consumption by twenty percent by July 1, 2020, relative to year 2000 levels. An agency shall implement all available cost-effective energy-saving measures to pursue these goals. In determining whether an energy-saving method is cost effective, an agency should primarily consider the measure's cost effectiveness over a five-year period rather than within one fiscal year. The State Energy Office shall provide agency assistance and information needed to help meet these goals. These provisions do not apply to a building designed, constructed or rehabilitated, and maintained in compliance with the Energy Independence and Sustainable Construction Act of 2007. The legislation provides for annual status reports to the State Energy Office and requires an agency that does not attain its required annual reduction goals to include in its report a detailed justification that it implemented all available, cost-effective energy conservation methods. The legislation also requires state agencies to replace incandescent light bulbs with compact fluorescent bulbs when the incandescent bulbs need to be replaced, and if the agency determines use of a compact fluorescent bulb is more cost effective over a five-year period. A state agency may purchase incandescent bulbs if the agency verifies, in writing, that compelling circumstances require their use.

*STATUS: Having passed the General Assembly, H.4766 (R.389) was signed into law by the Governor on June 11, 2008.*

## **RENEWABLE ENERGY RESOURCES AND NUCLEAR ENERGY**

The House approved **S.360**, relating to Renewable Energy Resources and Nuclear Energy under the “South Carolina Energy Efficiency Act”. The legislation defines the “renewable energy resources” that are encouraged under the provisions of the energy efficiency act as solar photovoltaic energy, solar thermal energy, wind power, hydroelectric, geothermal energy, tidal energy, recycling, hydrogen fuel derived from renewable resources, biomass energy, and landfill gas. The legislation also adds provisions to the act to ensure that any future energy strategy that promotes carbon-free, non-greenhouse gas emitting sources includes nuclear energy and renewable energy resources.

*The Senate’s version of the legislation includes nuclear energy as renewable energy.*

*STATUS: The House of Representatives returned S.360 to the Senate with amendments on February 7, 2008. Subsequently, the Senate did not concur with the House amendments and a conference committee was appointed to address differences with the Senate on March 6, 2008.*

## **SALES TAX EXEMPTION FOR ENERGY EFFICIENT APPLIANCES**

The General Assembly approved **S.1143** which establishes a sales tax holiday for energy efficient appliances and products, such as refrigerators, dishwashers, air conditioners, windows, and fluorescent light bulbs, that are purchased for home use. This legislation provides an exemption from the state sales tax for the gross proceeds of sales of a noncommercial home or personal use appliance with a sales price of no more than two thousand five hundred dollars that meets standards for energy efficiency. The exemption applies only to sales occurring during October (National ‘Energy Efficiency Month’) until 2019. The legislation includes provisions for only allowing the exemption when the Board of Economic Advisors is forecasting annual revenue growth of at least five percent.

*STATUS: Having passed the Senate and the House of Representatives, S.1143 was ratified on June 5, 2008 (R.356). The Governor vetoed the legislation on June 11.*

## **WIND ENERGY PRODUCTION FARMS FEASIBILITY STUDY COMMITTEE**

The General Assembly approved, as part of **H.4766**, provisions creating the Wind Energy Production Farms Feasibility Study Committee. This committee is charged with reviewing, studying, and making recommendations regarding the feasibility of windmill farms in the State including, but not limited to, whether South Carolina is a suitable site for wind production on land or in offshore areas, the economic and environmental impact to the State, and the cost of wind farm installation and operation in the State. The committee is composed of: (a) two members of the public at large appointed by the Governor; (b) two members of the Senate appointed by the President Pro Tempore; (c) two members of the House of Representatives appointed by the Speaker of the House of Representatives; (d) one member of the Senate appointed by the Chairman of the

Senate Committee on Agriculture and Natural Resources; (e) one member of the House of Representatives appointed by the chairman of the House Committee on Agriculture, Natural Resources, and Environmental Affairs; (f) the director of the State Energy Office of the Budget and Control Board, or his designee; (g) the director of the Department of Health and Environmental Control, or his designee; and (h) the secretary of the Department of Commerce, or his designee. The committee is required to submit its report to the General Assembly and Governor before January 1, 2010, at which time it is abolished.

*STATUS: Having passed the House of Representatives and the Senate, H.4766 was ratified on June 5, 2008 (R.389) and was signed into law by the Governor on June 11.*

## **FAMILY/HEALTH**

### **AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM FOR HIGH SCHOOLS**

See summary under Education

### **BEHAVIORAL HEALTH SERVICES STUDY COMMITTEE**

See summary under Government

### **CONFIDENTIALITY OF SEXUALLY TRANSMITTED DISEASE RECORDS**

The General Assembly approved legislation deleting the notification provision for the South Carolina Department of Health and Environmental Control to notify the school district superintendent and the school nurse of an attending student who has AIDS or HIV. The legislation adds that a school nurse or other school official who knows, or has reason to believe, that there has been a transmission of blood or bodily fluids between or among students due to an incident occurring on school property or at a school-sponsored or school-sanctioned event shall report such incidents to the Department of Health and Environmental Control. By January 1, 2009, each school district shall adopt the Centers for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure and shall communicate written notice of these procedures to each school within the district.

*STATUS: Having passed the General Assembly, S.970 (R.347) was vetoed by the Governor on June 11, 2008.*

### **CRIMINAL RECORDS CHECKS IN THE LICENSURE OF NURSES**

The General Assembly approved legislation authorizing criminal records checks in the licensure of nurses. This legislation provides that the State Board of

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Nursing may require a state and national criminal records check, supported by fingerprints. The South Carolina Law Enforcement Division is authorized to retain fingerprints for certification purposes and for notification of the department regarding criminal charges. The applicant is responsible for the cost of the criminal history background check. In addition, a licensed nurse shall wear a clearly legible identification badge bearing the nurse's official title and first or last name or both.

*STATUS: Having passed the General Assembly, H.5012 (R.398) was vetoed by the Governor on June 11, 2008.*

## **DENTAL TECHNOLOGICAL WORK**

The legislation requires an out-of-state dental lab to employ a dental technician registered in South Carolina if the lab performs dental technological work prescribed by a dentist licensed in South Carolina. The legislation also requires all dental labs to provide certification of the country where the lab work was performed; a list of all materials used to make the device; and the name, address and certificate number of the person or organization authorized to make the device.

*STATUS: Having passed the General Assembly, H.3906 (R.289) was vetoed by the Governor on May 28, 2008. On June 3 and 4, the House of Representatives and Senate overrode the veto to allow the bill to become law (Act No. 295).*

## **EMERGENCY MEDICAL TECHNICIAN BACKGROUND CHECKS**

The legislation requires a person seeking Emergency Medical Technician (EMT) certification or recertification to undergo a state criminal records check and a national criminal records check. The state and national criminal records checks are not required for an EMT employed as of July 1, 2008, until the EMT applies for recertification. A state criminal records check will cost no more than eight dollars and is the responsibility of the EMT or EMS agency.

*STATUS: Having passed the General Assembly, H.4334 (R.381) was signed into law by the Governor on June 11, 2008 (Act No. 304).*

## **JOINT CITIZENS AND LEGISLATIVE COMMITTEE ON CHILDREN**

This legislation establishes the Joint Citizens and Legislative Committee on Children to be composed of three members of the House of Representatives appointed by the Speaker of the House, three members of the Senate to be appointed by the President Pro Tempore, and three members to be appointed by the Governor. The director of the Department of Juvenile Justice, the director of the Department of Social Services, the director of the Department of Disabilities and Special Needs, the superintendent of the Department of Education, and the director of the Department of Mental Health shall serve as ex officio, nonvoting members of the committee. Members appointed by the Governor must not be employees of the State of South Carolina. Members serve at the pleasure of the appointing authority.

The committee shall study issues relating to children as the committee may undertake or as may be requested or directed by the General Assembly. The committee may contract for all necessary legal research and support services, subject to funding.

The committee shall become operative on July 1, 2008. The committee must submit an annual written report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House no later than the first of February, commencing in 2009. The report must detail the work of the committee, account for the committee's expenditures, and provide any findings and recommendations the committee develops relating to children's issues it has studied.

*STATUS: Having been approved by the General Assembly, S.1011 (R.306) was signed into law by the Governor on June 4, 2008 (Act No. 251).*

## **MULTIPLE SCLEROSIS HEALTHCARE ACCESS STUDY COMMITTEE**

This committee is to develop a plan for coordinated service delivery for person with multiple sclerosis. The committee is to be composed of representatives of the Department of Health and Human Services, the two medical schools, SC Hospital Association, SC Medical Association, the National Multiple Sclerosis Society, a MS nurse, and persons living with MS from different geographic regions of the state. The committee shall submit a written report of its findings and recommendations to the General Assembly before January 1, 2009, at which time the committee is abolished.

*STATUS: Having passed the General Assembly, S.775 (R.190) became law without the Governor's signature on February 20, 2008.*

## **PREREQUISITES FOR THE PERFORMANCE OF AN ABORTION**

This legislation revises the prerequisites for the performance of an abortion by providing that, if an ultrasound is performed, an abortion may not be performed sooner than one hour following the completion of the ultrasound. The physician who is to perform the abortion or an allied health professional working in conjunction with the physician must inform the woman before the ultrasound procedure of her right to view the ultrasound image at her request during or after the ultrasound procedure.

*STATUS: Having been approved by the General Assembly, H.3355 (R.246) was signed into law by the Governor on May 14, 2008 (Act No. 222).*

# **GOVERNMENT**

## **BEHAVIORAL HEALTH CARE SERVICES STUDY COMMITTEE**

The General Assembly approved legislation creating a study committee to examine the delivery of behavioral health care services in South Carolina. The committee shall make a report to the General Assembly together with its findings and recommendations no later than February 15, 2010, at which time it is dissolved.

*STATUS: Having been approved by the General Assembly, H.4899 (R.426) was signed into law by the Governor on June 16, 2008.*

## **CIRCUMSTANCES UPON WHICH THE STATE LAW ENFORCEMENT DIVISION MAY RELEASE ITS LIST OF CONCEALABLE WEAPONS PERMIT HOLDERS**

This legislation provides that State Law Enforcement Division (SLED) may release the list of concealable weapons permit holders only if the request is made by a law

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enforcement agency to aid in an official investigation or if the list is required to be released under a subpoena or court order. Except for when these conditions are met, a person in possession of a list of permit holders obtained from SLED must destroy the list. The legislation also provides that during the first quarter of each calendar year, SLED must publish a report of the following information regarding the previous calendar year: (1) the number of permits; (2) the number of permits that were issued; (3) the number of permit applications that were denied; (4) the number of permits that were renewed; (5) the number of permit renewals that were denied; (6) the number of permits that were suspended or revoked; and (7) the name, address, and county of a person whose permit was revoked, including the reason for the revocation. The report must include a breakdown of such information by county.

*STATUS: The General Assembly approved H.3528 (R.235), and the Governor signed the legislation into law on April 16, 2008 (Act No. 202).*

## **COST OF LIVING ADJUSTMENTS FOR STATE RETIREES**

As part of H.4876, the General Assembly approved provisions for a guaranteed two percent annual cost of living adjustment (COLA) for beneficiaries within the South Carolina Retirement System and the South Carolina Police Officers Retirement System. The legislation provides that in years when the Consumer Price Index, which is used to measure inflation, increases by no more than two percent, retirees within these systems are awarded a two percent cost of living adjustment. In years when the Consumer Price Index increases by more than two percent, the legislation establishes conditions that must be met before these retirees may be awarded a cost of living adjustment beyond two percent up to the total percentage increase in the Consumer Price Index or four percent, whichever is less.

*STATUS: Having passed the House of Representatives and the Senate, H.4876 was ratified on May 22, 2008 (R.295). On May 27, the Governor vetoed the legislation, and, on June 3 and 4, the House and Senate overrode the veto to allow the bill to become law.*

## **EARMARK PROJECT DISCLOSURE REQUIREMENTS**

By adopting resolution H.4546, the House of Representatives revised its rules to establish disclosure requirements relating to earmark projects and programs in appropriations bills. An earmark project or program includes an appropriation or budget proviso for a specific program or project not originating with a written agency budget request or not included in an appropriations bill from the prior fiscal year. Under the new House Rules provisions, every request for an earmark project or program included in an appropriations bill must be made in writing utilizing designated forms and must include such information as the name of the House Member making the request and a brief explanation of the program or project. The new rule provides for how the list of earmarks with their identifying information is to be compiled and distributed to the membership. The list of earmark projects and programs included in the House Ways and Means Committee version of an appropriations bill must also be posted on the General Assembly's web site. A two-thirds vote of the membership present and voting is



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required in order to include an earmark project or program in an appropriations bill or a conference/ free conference committee report without adhering to the new disclosure requirements.

*STATUS: On January 23, 2008, House Resolution H.4546 was adopted to include earmark project disclosure requirements in the Rules of the South Carolina House of Representatives.*

## **FILM COMMISSION TRANSFERRED TO THE DEPARTMENT OF PARKS, RECREATION AND TOURISM**

With the passage of H.4815 and S.1171, the General Assembly approved legislation that transfers the South Carolina Film Commission from the Department of Commerce and establishes it as a separate division of the Department of Parks, Recreation and Tourism.

*STATUS: Having passed the House of Representatives and the Senate, H.4815 was ratified on June 5, 2008 (R.392). The Governor vetoed the legislation on June 11. Having passed the Senate and the House of Representatives, S.1171 was ratified on June 5, 2008 (R.359) and became law without the Governor's signature on June 12.*

## **FOUNDATIONS OF AMERICAN LAW AND GOVERNMENT DISPLAY**

See summary under Heritage and Holidays

## **PROHIBITIONS ON THE REGULATION OF FIREARMS**

This legislation provides that counties and municipalities may not enact regulations to prohibit a landowner from discharging a firearm on his property to protect family members, employees, or the general public from animals posing a direct threat or danger on a parcel of land comprised of at least 25 contiguous acres. Any ordinance regulating the discharge of firearms that does not specifically provide for an exclusion pursuant to this item is unenforceable as it pertains to an incident described in this item; otherwise, the ordinance is enforceable.

*STATUS: Having been approved by the General Assembly, S.1039 (R.239) was vetoed by the Governor on May 14, 2008. On May 15 and 21, the Senate and House of Representatives overrode the veto to allow the bill to become law (Act No. 220).*

## **RESIDENTIAL IMPROVEMENT DISTRICT ACT**

See summary under Business/Economic Development

## **RESTRICTIONS ON WHERE A SEX OFFENDER MAY RESIDE**

See summary under Criminal Justice/Courts

## **"SOUTH CAROLINA PUBLIC INVOCATION ACT"**

See summary under Heritage and Holidays

## **TAX INCREMENT FINANCING FOR AFFORDABLE HOUSING PROJECTS**

The General Assembly approved **H.4743** which revises the Tax Increment Financing Acts for counties and municipalities by including affordable housing projects as redevelopment projects that qualify for financing. The legislation authorizes a county or municipality to use all or a part of new property tax revenues generated in a tax increment financing district to provide or support publicly-owned affordable housing in the district or to provide infrastructure projects to support privately-owned affordable housing in the district. Under the legislation, affordable housing is residential housing appropriately priced for rent or sale to a person or family whose income does not exceed eighty percent of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development (HUD).

*STATUS: Having passed the House of Representatives and the Senate, H.4743 was ratified on June 5, 2008 (R.386). The Governor vetoed the legislation on June 11.*

# HERITAGE AND HOLIDAYS

## “I BELIEVE” SPECIAL LICENSE PLATES

This legislation provides that the Department of Motor Vehicles may issue 'I Believe' special motor vehicle license plates to owners of private motor vehicles registered in their names. The plate must contain the words 'I Believe' and a cross superimposed on a stained glass window.

*STATUS: These provisions were placed in two different bills: S.1329 and S.1050. Having been approved by the General Assembly, S.1329 (R.316) became law without the Governor's signature on June 5, 2008 (Act No. 253). Having been approved by the General Assembly, S.1050 (R.350) became law without the Governor's signature on June 12, 2008 (Act No. 297).*

## INDIGO BLUE, STATE'S OFFICIAL COLOR

The General Assembly approved and the Governor signed into law S.1033, legislation designating the color indigo blue that was worn on the uniform of Colonel William Moultrie's soldiers and adopted as the background of the South Carolina State flag as the official color of the State of South Carolina.

*STATUS: Having been approved by the General Assembly, S.1033 (R.229) was signed into law by the Governor on April 16, 2008 (Act No. 200).*

## “JUNETEENTH CELEBRATION OF FREEDOM DAY”

The General Assembly approved and the Governor signed into law H.4731, a bill designating the nineteenth day of June each year as “Juneteenth Celebration of Freedom Day” in South Carolina as a time to commemorate and reflect upon the freedom of African Americans and their contributions to this State and nation. This day of celebration commemorates the June 19, 1865, date when Union soldiers landed at Galveston, Texas, to enforce President Abraham Lincoln's Emancipation Proclamation.

*STATUS: Having passed the House of Representatives and the Senate, H.4731 was ratified on May 8, 2008, (R.260) and was signed into law by the Governor on May 14 (Act No. 228).*

## FOUNDATIONS OF AMERICAN LAW AND GOVERNMENT DISPLAY

This legislation provides that each municipality, county, or other political subdivision of this State including, but not limited to, school boards are authorized to post the Foundations of American Law and Government display in a visible, public location in the public buildings of this State and its political subdivisions.

The Foundations of American Law and Government display must include:

- The Ten Commandments;
- The Magna Carta;
- The Mayflower Compact, 1620;
- The Declaration of Independence;
- 'The Star-Spangled Banner' by Francis Scott Key;
- The Bill of Rights of the United States Constitution;
- The Preamble to the South Carolina Constitution;
- The Nineteenth Amendment to the United States Constitution;
- The national motto 'In God We Trust';
- The image of Lady Justice;
- The Lord's Prayer;
- The Emancipation Proclamation, 1863; and
- Martin Luther King, Jr.'s 'I Have a Dream' speech.

All documents which are included in a Foundations of American Law and Government display must be posted on paper not less than eleven by fourteen inches in dimension and must be framed in identically-styled frames. One document may not be displayed more prominently than another.

The Attorney General's Office shall prepare a statement of the applicable constitutional law and shall update this statement to reflect any changes made in the law. The Attorney General's Office shall make the statement available in the most economical and convenient method, including, posting the statement on a website.

The legislation also establishes an advisory committee to make recommendations to the General Assembly and the Department of Archives and History regarding the public representations of the Foundations of American Law and Government display documents, the appropriate information to be included in the display, and recommendations concerning other documents to be added to the list for the display.

*STATUS: Having been approved by the General Assembly, H.3159 (R.370) was signed into law by the Governor on June 11, 2008.*

## **“SECOND AMENDMENT RECOGNITION ACT”**

As part of **S.1143**, the General Assembly approved the “Second Amendment Recognition Act.” This legislation establishes the “Second Amendment Weekend” during the Friday and Saturday following Thanksgiving Day each November. During this forty-eight hour period, the sales of handguns, rifles, and shotguns are exempted from the state sales and use tax.

*STATUS: Having passed the Senate and the House of Representatives, S.1143 was ratified on June 5, 2008 (R.356). The Governor vetoed the legislation on June 11.*

## **“SOUTH CAROLINA PUBLIC INVOCATION ACT”**

This legislation outlines a procedure whereby a deliberative public body, by ordinance, resolution, or written policy statement, may adopt a policy to permit a public invocation before each meeting of the public body. The policy may allow for an invocation to be offered on a voluntary basis, at the beginning of the meeting, by:

- (1) one of the public officials, elected or appointed to the deliberative public body, so long as the opportunity for invocation duty is regularly and objectively rotated among all of that deliberative public body's public officials;
- (2) a chaplain elected by the public officials of the deliberative public body; or
- (3) an invocation speaker selected on an objective and rotating basis from among a wide pool of the religious leaders serving established religious congregations in the local community in which the deliberative public body meets. To ensure objectivity in the selection, the deliberative public body on an annual basis shall compile a list of all known, established religious congregations and assemblies by reference to local telephone books or similar sources, or both, and on an annual basis shall mail an invitation addressed to the 'religious leader' of each congregation and assembly. The invitation must contain, in addition to scheduling and other general information, the following statement: 'A religious leader is free to offer an invocation according to the dictates of his own conscience, but, in order to comply with applicable constitutional law, the [name of deliberative public body issuing the invitation] requests that the public invocation opportunity not be exploited to proselytize or advance any one, or to disparage any other, faith or belief'. Each respondent who accepts the invitation to deliver an invocation at an upcoming meeting of the deliberative public body shall be scheduled to deliver an invocation on a first-come, first-served basis.

*STATUS: Having been approved by the General Assembly, S.638 (R.282) was signed into law by the Governor on May 27, 2008 (Act No. 241).*

## **THE SOUTH CAROLINA CIVIL WAR SESQUICENTENNIAL ADVISORY BOARD**

This legislation creates the South Carolina Civil War Sesquicentennial Advisory Board. The purpose of the board is to: (1) promote a suitable statewide observance of the sesquicentennial of the Civil War; (2) cooperate and assist national, state, and local organizations with programs and activities suitable for the sesquicentennial observance; (3) assist in ensuring that any observance of the sesquicentennial of the Civil War is inclusive and appropriately recognizes the experiences and points of view of all people affected by the Civil War; and (4) provide assistance for the development of programs, projects, and activities on the Civil War that have lasting educational value.

*STATUS: Having been approved by the General Assembly, S.104 (R.297) became law without the Governor's signature on June 5, 2008 (Act No. 247).*

## **IMMIGRATION**

### **"SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT"**

Highlights of the legislation include the following.

#### **Harboring and Transporting Illegal Aliens**

The legislation provides that it is a felony offense to transport or harbor illegal aliens with intent to further that person's illegal entry into the United States or avoiding apprehension or detection of that person's illegal status by authorities. A violation is punishable with a fine of up to \$5,000 dollars and/or imprisonment for up to five years. Specific exemptions are established for providing health care treatment and for providing shelter that is offered for strictly humanitarian purposes or in compliance with the Violence Against Women Act.

#### **"Sanctuary Cities" Prohibited**

Political subdivisions are prohibited from adopting provisions that limit or prohibit the enforcement of State laws pertaining to immigration.

Political subdivisions are prohibited from adopting provisions that limit or prohibit law enforcement or other officials from communicating to appropriate federal or state officials with regard to the immigration status of any person within this State.

#### **Preemption Language**

Political subdivisions may not enact any provisions pertaining to the employment, licensing, permitting, or otherwise doing business with a person based upon that person's authorization to work in the United States that exceeds or otherwise conflicts with federal law or that is in conflict with state law. An enactment found to be in conflict with federal or state law is void.

### **Penalties for Fraudulent Documents**

The legislation provides that it is unlawful to display or possess a false, fictitious, fraudulent, or counterfeit green card or other document, such as a driver's license or social security card, for the purpose of offering proof of United States citizenship or classification by the United States as an alien lawfully admitted for temporary or permanent residence under federal immigration law. A first offense is a misdemeanor subject to a fine of no more than \$100 dollars or imprisonment for no more than 30 days. A second or subsequent offense is a felony subject to a fine of no more than \$500 dollars or imprisonment for no more than five years.

### **Public Sector Employment**

On or after January 1, 2009, this legislation requires every public employer to register and participate in the federal work authorization program to verify the employment authorization of all new employees. 'Federal work authorization program' means the E-Verify Program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program.

A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees:

(1) to register and participate in the federal work authorization program to verify the employment authorization of all new employees; and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification of the employment authorization of all new employees; or

(2) to employ only workers who:

(a) possess a valid South Carolina driver's license or identification card issued by the South Carolina Department of Motor Vehicles (SCDMV);

(b) are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in Section 56-1-40 through 56-1-90; or

(c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the Executive Director of the SCDMV, or his designee. The Executive Director of the SCDMV, or his designee, shall publish on its website a list of states where the license requirements are at least as strict as those in South Carolina.

A public employer and contractor must not divide work or duties that would otherwise constitute a single service contract into separate contracts for the purpose of avoiding these requirements.

These provisions apply on and after January 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of 500 or more employees; on and after July 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of 100-499; and on and after January 1, 2010, with respect to all other contractors, subcontractors or sub-subcontractors.

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A public employer complies with these provisions if it obtains a written statement from the contractor certifying that the contractor will comply with the requirements and agrees to provide to the public employer any documentation required to establish either: (a) the applicability of these provisions to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance these provisions by the contractor and any subcontractor or sub-subcontractor. A public employer need not audit or independently verify a contractor's compliance with these provisions.

A contractor or public employer who in good faith complies with these requirements may not be sanctioned or subjected to any civil or administrative action for employing an individual not authorized for employment in the United States.

A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.

### **Private Sector Employment**

#### *South Carolina Employment License*

All private employers in South Carolina on or after July 1, 2009 shall be imputed a South Carolina employment license, which permits a private employer to employ a person in this state. On and after July 1, 2009, a private employer may not employ a person unless his South Carolina employment license is in effect and is not suspended or revoked. A private employer's employment license shall remain in effect provided the private employer complies with these provisions. The legislation includes graduated civil penalties for violations. Only violations that take place within five years of the initial occurrence may be considered subsequent violations.

#### *Employment Eligibility Verification*

On and after July 1, 2009, all private employers of 100 or more employees who are required by federal law to complete and maintain federal employment eligibility verification forms or documents must:

(1) register and participate in the E-Verify federal work authorization program, or its successor, to verify information of all new employees, and verify the work authorization of every new employee within five business days after employing a new employee; or

(2) employ only workers who, at the time of employment:

(a) possess a valid South Carolina driver's license or identification card issued by the SCDMV;

(b) are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in Sections 56-1-40 through 56-1-90; or

(c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of



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the SCDMV, or his designee, shall determine which states have drivers license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The list shall be published on the Department of Labor, Licensing and Regulation's (LLR) website.

These provisions apply to all private employers who employ less than 100 employees and who are required by federal law to complete and maintain federal employment eligibility verification forms or documents on and after July 1, 2010.

An employer is given five days in which to complete only the E-Verify option, and during this time the worker may be employed.

*Knowingly or Intentionally Employing Unauthorized Aliens*

A private employer shall not knowingly or intentionally employ an unauthorized alien. The penalty structure for knowingly and intentionally employing an illegal is as follows:

- First offense: suspension of employment license for 10-30 days
- Second offense: suspension of employment license for 30-60 days
- Third offense: revocation of employment license for five years

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*Investigation of Allegations of Violations*

The legislation outlines procedures whereby LLR may investigate allegations of violations pertaining to the South Carolina employment license or the knowing and intentional employment of unauthorized aliens. It is a separate violation each time the private employer fails to verify the immigration status of a new employee.

In assessing a civil penalty or taking any other disciplinary action for a violation of these provisions, the Director of LLR shall base his determination on any evidence or information collected during the investigation or submitted for consideration by the employer, and shall consider the following factors, if relevant:

- (1) the number of employees for whom the private employer has failed to verify their immigration status;
- (2) the prior violations of this chapter by the private employer;
- (3) the size of the private employer's workforce;
- (4) any actions taken by the private employer to comply with federal immigration laws or with the provisions of this chapter;
- (5) any actions taken by the private employer subsequent to the inspection or random audit to comply with the provisions of this chapter;
- and
- (6) the duration of the violation.

A list of all private employers who have been assessed a civil penalty, or who have had their licenses disciplined, or revoked shall be published on LLR's website.

Private employers may seek review of any assessment of a civil penalty or disciplinary action with the Administrative Law Court.

LLR may develop a statewide random auditing program to inspect private employers for compliance.

*State Income Taxes*

The legislation caps at \$600 dollars the amount that a taxpayer is allowed to claim each year on state income taxes as a deductible business expense for wages paid to an unauthorized alien. This does not apply to an individual hired by the taxpayer prior to January 1, 2009. This deductible business expense cap does not apply to the wages of employees whose legal status is verified.

The legislation's state income tax provisions address not only direct employment situations, but also compensation paid for contract work that is reported on Form 1099. In such situations, state income tax must be withheld at the rate of seven percent of the amount of compensation if the employed individual fails to provide a taxpayer identification number or social security number.

### **Public Benefits**

The legislation requires the verification of citizenship status in order for an individual who is at least 18 years old to be eligible to receive public benefits. Every applicant is required to execute an affidavit verifying the lawfulness of his presence in the country. In the case of an individual claiming legal alien status, the affidavit serves as temporary authorization for receiving benefits while further verification is conducted through the federal Systematic Alien Verification of Entitlement (SAVE) program. An individual who executes a fraudulent affidavit or assists others in making fraudulent claims is guilty of a felony offense and must be imprisoned for up to five years and/or fined at the discretion of the court.

Exceptions are provided to cover certain circumstances including but not limited to: as receiving disaster relief, benefits for certain emergency medical treatment, public health assistance for immunization, prenatal care, assistance for victims of domestic violence, and access to certain programs and services for the homeless such as soup kitchens, crisis counseling, and short-term shelters.

### **Registration of Immigration Assistance Services**

The legislation establishes and provides for the enforcement of standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys. The legislation limits what immigration assistance a nonlawyer may provide as well as restricts certain activities of these nonlawyers providing immigration assistance for compensation. Exceptions are provided for attorneys and their staff and certain not-for-profit organizations. A person performing immigration assistance services is required to obtain appropriate business licenses. The legislation requires nonattorneys to post signs and give notice in advertisements and communications clearly indicating that they are not attorneys or authorized to give legal advice or accept fees for legal advice. Civil and criminal penalties are provided.

### **Restitution for Identity Fraud**

The legislation provides that an individual found guilty of financial identity fraud or identity fraud involving the falsification of documents that enables an illegal alien to receive public benefits must make restitution to the agency or political subdivision that administered the benefit or entitlement program.

The legislation establishes a civil cause of action for an individual who suffers an ascertainable loss as a result of such identity fraud relating to illegal immigration. A plaintiff is entitled to treble damages.

### **Higher Education**

The legislation provides that illegal aliens are not eligible to attend public institutions of higher learning. Illegal aliens are not eligible to receive public higher education benefits including, but not limited to, scholarships, financial aid, grants or resident tuition.

### **Recording and Reporting Immigration Law Violations**

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The State Commission for Minority Affairs shall establish and maintain a 24-hour toll free telephone number and electronic website to receive, record, collect, and report allegations of violations of any laws or regulations by any non-United States citizen or immigrant, and allegations of violations of any laws or regulations against any non-United States citizen or immigrant.

The State Commission for Minority Affairs shall establish and maintain a centralized tracking database consisting of all information received through the 24-hour toll free telephone number and electronic website, and report all alleged violations to the appropriate law enforcement or other authority.

**Cooperation Between State and Federal Law Enforcement**

The legislation directs the chief of the South Carolina Law Enforcement Division to enter into negotiations with federal authorities in order to reach an understanding on: (1) the enforcement of federal immigration laws by State and local law enforcement; (2) the detention of illegal immigrants by State and local law enforcement officials and the costs associated with those detentions; (3) the removal of detained illegal immigrants by federal authorities or the deportation of illegal immigrants by state and local law enforcement officials; (4) relevant training for state and local law enforcement officials; and (5) further communication and cooperation between federal law enforcement and state and local law enforcement officials in the area of immigration enforcement.

**Bond Consideration**

The legislation allows an accused individual's illegal alien status to be used as a consideration for determining bond.

**Detention of Illegal Aliens**

The legislation requires law enforcement to make a reasonable attempt to ascertain the immigration status of every person charged with a criminal offense is confined, for any period, in a local, regional, or state jail or other correctional facility. If the prisoner is an alien, verification must be made within 72 hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other designated office or agency. If the prisoner is determined to be an illegal alien, the United States Department of Homeland Security must be notified. An account must be kept of the daily expenses incurred for detaining an illegal aliens and an invoice must be sent to the United States Department of Homeland Security for reimbursement of those costs.

### **State Grand Jury**

The legislation expands the jurisdiction of the State Grand Jury to include matters involving the large-scale production of false documentation for the purposes of illegal immigration or financial identity fraud.

### **Firearms**

The legislation provides that it is unlawful for an illegal alien to possess, purchase, offer to purchase, sell, lease, rent, barter, exchange, or transport into this State a firearm. A violation is a felony offense punishable with a fine of no more than \$10,000 dollars or imprisonment for no more than 10 years, or both.

The legislation provides that it is unlawful for an individual to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States. A violation is a misdemeanor offense punishable with a fine of no more than \$2,000 dollars or imprisonment for no more than three years, or both.

### **Wrongful Termination**

The legislation provides a civil right of action for wrongful termination against an employer who discharges an employee authorized to work in the United States for the purposes of replacing that employee with a person the employer knows or should reasonably know is not lawfully present and authorized to work in the United States. The recovery for an individual who brings a civil suit under this provision is limited to the reinstatement of his former position, actual damages and lost wages. This cause of action cannot be brought against an employer who submits the necessary identifying information for all employees through the Systematic Alien Verification of Entitlement (SAVE) program, the E-Verify Program or a successor program used for verification of work authorization and operated by the United States Department of Homeland Security. Such a cause of action is equitable in nature and must be brought within one year from the date of the alleged violation.

*STATUS: Having been approved by the General Assembly, H.4400 (R.327) was signed into law by the Governor on June 4, 2008 (Act No. 280).*

## **INSURANCE**

### **HEALTH CARE FINANCIAL RECOVERY AND PROTECTION ACT**

The General Assembly approved H.3674, the "South Carolina Health Care Financial Recovery and Protection Act." The legislation establishes prompt payment provisions requiring insurers to make timely payments to providers of health care services who submit unproblematic claims. The legislation establishes criteria for what is to be considered a clean claim free of any defect, error, or impropriety. The legislation requires payment within forty business days for a clean claim submitted on paper and payment within twenty business days for a clean claim submitted electronically. A

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clearinghouse, billing service, or any other vendor that contracts with a provider to deliver health care claims to an insurer is prohibited from converting electronic claims received from the provider into paper claims for submission to the insurer. A violation constitutes an unfair trade practice.

Upon written request from a physician who is also a participating provider, an insurer is required to provide, by CD-ROM, or electronically at the insurer's option, the fee schedule that is contracted with that physician for up to 100 codes customarily and routinely used by the specialty type of such physician. Each physician may request from an insurer an updated fee schedule no more than two times annually. A physician may choose to receive a hard copy of the fee schedule, but in such instances an insurer may charge a reasonable fee to cover the increased administrative costs.

*STATUS: Having passed the House of Representatives and the Senate, H.3674 was ratified on June 5, 2008 (R.374) and signed into law by the Governor on June 11.*

## **SMALL EMPLOYER HEALTH GROUP COOPERATIVE**

The General Assembly approved and the Governor signed into law **S.588**, legislation establishing requirements, powers, duties, and restrictions for a small employer health group cooperative, and enrolled the bill for ratification. The legislation enhances the authority for small employers to form cooperatives for the purpose of providing lower health insurance costs to their employees. The legislation requires the Department of Insurance and Office of Research and Statistics of the Budget and Control Board to submit to the Governor and the General Assembly by January 1, 2010, a report on the effectiveness of the health group cooperative in expanding the availability of health insurance coverage for small employers.

*STATUS: Having passed the General Assembly, S.588 (R.189) was signed into law by the Governor on February 19, 2008 (Act No. 180).*

# MILITARY

## ACTIVE MILITARY PERSONNEL EXEMPT FROM PROFESSIONAL AND OCCUPATIONAL CONTINUING EDUCATION REQUIREMENTS

The General Assembly approved S.1115, which provides that a person whose profession or occupation is regulated by the Department of Labor, Licensing and Regulation is exempt from completing continuing education requirements for his profession or occupation while serving on active military duty.

*STATUS: Having passed the Senate and the House of Representatives, S.1115 was ratified on June 5, 2008 (R.353) and signed into law by the Governor on June 11 (Act No. 299).*

## IN-STATE TUITION RETAINED AT STATE'S HIGHER EDUCATION INSTITUTIONS FOLLOWING MILITARY DEPLOYMENT OR REASSIGNMENT

The General Assembly approved S.1115, a bill to provide that, when armed services personnel are ordered away from the State, their dependents remain eligible to receive in-state tuition rates at the public university or college they are attending so long as they remain continuously enrolled at the institution. Under current law, this eligibility to receive in-state tuition rates extends for only one year following the military deployment or reassignment.

*STATUS: Having passed the Senate and the House of Representatives, S.1115 was ratified on June 5, 2008 (R.353) and signed into law by the Governor on June 11 (Act No. 299).*

## MILITARY EXEMPT FROM HUNTING LICENSES FOR SMALL GAME

The legislation allows a member of the Armed Forces of the United States, who is a resident of South Carolina stationed outside of the state, be allowed to fish or hunt without purchasing any type of state fishing or hunting license, upon presentation of an official furlough or leave papers.

*STATUS: Having passed the General Assembly, S.873 (R.301) became law without the Governor's signature (Act No. 263).*

## QUALIFICATIONS FOR ATTENDANCE AT PUBLIC SCHOOLS WHEN CHILD'S PARENT(S) OR LEGAL GUARDIAN(S) IS IN THE MILITARY

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This legislation provides that a child may attend the public schools of a school district free of charge if the child resides with an adult resident of that district as a result of the child's parent(s) or legal guardian's military deployment or call to active duty more than 70 miles from their residence for a period greater than 60 days. Also, if the child's parent or legal guardian returns from such military deployment or active duty prior to the end of the school year, the child may finish the school year in the school he attends without charge, even if the child resides in another school district for the remainder of the school year due to his parent or legal guardian returning home.

*STATUS: Having passed the General Assembly, H.4320 (R.418) was signed into law by the Governor on June 16, 2008.*

## **STATE VETERANS' CEMETERIES**

The legislation reduces the minimum residency option for an honorable discharged veteran and his or her eligible family member for burial in a state veterans' cemetery from 20 years to 5 years. This legislation also clarifies that the veteran's eligible family member may be interred in the veterans' cemetery if he or she predeceases the veteran.

*STATUS: Having passed the General Assembly, H.4713 (R.331) was signed into law by the Governor on June 4, 2008 (Act No. 258).*

## **VETERAN LICENSE PLATES**

### **Bronze Star License Plates**

The General Assembly approved legislation allowing the South Carolina Department of Motor Vehicles (SCDMV) to issue 'Bronze Star' special license plates to owners of private passenger carrying motor vehicles registered in their names who have been awarded the Bronze Star. The license plate must contain the words 'combat veteran' and an illustration of the Bronze Star.

### **Motorcycle License Plates for Veterans**

The General Assembly approved legislation allowing for the following special license plates and others already in production to be issued for motorcycles: American Legion, retired members of the United States Armed Forces, Sons of Confederate Veterans, United States Armed Forces, Korean War Veterans, Vietnam Veterans, Marine Corps League, and World War II Veterans.

### **Operation Desert Storm-Desert Shield Veterans License Plates**

The General Assembly approved legislation allowing the SCDMV to issue 'Operation Desert Storm-Desert Shield Veteran' special motor vehicle license plates to owners of private passenger-carrying motor vehicles or light pickups registered in their names who are veterans of Operation Desert Storm-Desert Shield who served on active duty in the Persian Gulf at anytime during the period of August 2, 1990, to February 28, 1991.



### **Operation Enduring Freedom Veterans License Plates**

The General Assembly approved legislation allowing the SCDMV to issue 'Operation Enduring Freedom Veteran' special motor vehicle license plates to owners of private passenger-carrying motor vehicles or light pickups registered in their names who are veterans of Operation Enduring Freedom who served on active duty fighting against terrorism at anytime following September 11, 2001, until the operation is completed.

### **Operation Iraqi Freedom Veterans License Plates**

The General Assembly approved legislation allowing the SCDMV to issue 'Operation Iraqi Freedom Veteran' special motor vehicle license plates to owners of private passenger-carrying motor vehicles or light pickups registered in their names who are veterans of Operation Iraqi Freedom who served on active duty in Iraq or the Persian Gulf at anytime from March 20, 2003, until the operation is completed.

### **Purple Heart License Plates**

The General Assembly approved legislation providing that there is no fee for a license plate issued to a recipient of the Purple Heart for use on a private passenger motor vehicle or motorcycle.

### **Silver Star License Plates**

The General Assembly approved legislation allowing the SCDMV to issue 'Silver Star' special license plates to owners of private passenger carrying motor vehicles registered in their names who have been awarded the Silver Star. The license plate must contain the words 'combat veteran' and an illustration of the Silver Star.

### **Veteran License Plates**

The General Assembly approved legislation that allows the SCDMV to issue veteran license plates for use on private passenger motor vehicles or motorcycles to those individuals that have been honorably discharged from service. There are criminal penalties for providing false information to obtain the plate.

*STATUS: Having been approved by the General Assembly, S.1050 (R.350) became law without the Governor's signature on June 12, 2008 (Act No. 297).*

*Having been approved by General Assembly, S.605 (R.404) pertaining to motorcycle license plates was signed into law by the Governor on June 16, 2008.*

## **NATURAL RESOURCES**

### **ALLIGATOR MANAGEMENT PROGRAM**

This legislation requires the Department of Natural Resources to establish an Alligator Management Program that allows for hunting and for selective removal of alligators in order to provide for the sound management of the animals and to ensure the continued viability of the species. The department may establish an alligator hunting season. A person desiring to hunt and take alligators must apply to the department and pay a ten-dollar, nonrefundable application fee. Successful applicants must be randomly selected and must pay a one hundred dollar fee for the permit. The legislation establishes provisions under which a landowner or lessee of property on which alligators occur may apply to the department for a permit to participate in the Private Lands Alligator program. The legislation authorizes the department to designate alligator control agents who demonstrate by training and experience that they possess the skills to remove alligators. The legislation establishes penalties for violating alligator hunting provisions and for the unlawful feeding, enticing, or molesting of alligators. All revenue relating to the legislation, including fines, forfeitures, sales, and fees, must be deposited in the Wildlife Protection Fund and used by the department to support the Alligator Management Program.

*STATUS: Having passed the General Assembly, S.452 (R.188) was signed into law by the Governor (Act No. 179).*

### **DEER HUNTING PROVISIONS**

The legislation revises provisions for hunting and antlered deer. The legislation eliminates a provision authorizing the Department of Natural Resources to establish deer hunting provisions in Game Zones 1 and 2 through regulations. The legislation provides that in Game Zones 1 and 2 it is unlawful to pursue deer with dogs and it is unlawful to bait for deer. The legislation specifies the weapons that may be used during special primitive weapons seasons including bow and arrow, crossbow, certain muzzle-loading shotguns and certain rifles.

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The legislation revises bag limits on antlered deer so as to provide limits of: (1) Game Zones 1 and 2: daily not more than two or annual not more than five for all seasons combined; (2) Game Zones 3, 4, 5, and 6: no daily or season limit.

*STATUS: Having passed the General Assembly, S.691 (R.343) was signed into law by the Governor on June 11, 2008 (Act No. 286).*

## **FERTILITY CONTROL AGENT INTRODUCED INTO WILDLIFE**

This legislation makes it unlawful to introduce a fertility control agent or chemical substance into any wildlife without a permit from the Department of Natural Resources. The department may issue a permit, authorizing the use of a fertility control agent or chemical in wildlife only for bonafide scientific research or management activities. The department is authorized to use fertility control agents or chemical substances on wildlife in order to protect human safety or for management, scientific or educational purposes. However, preference must be given to hunting as the primary method of controlling wildlife before a fertility control agent or chemical substance is utilized. Nothing prohibits the use pesticides for the control of commensal rodents. In addition, violation of the provisions is a misdemeanor and fines of not more than two thousand five hundred dollars or imprisonment not more than two years, or both. Magistrate court is vested with jurisdiction to hear and dispose of these cases. The Department of Natural Resources is authorized to promulgate regulations to implement and regulate the provisions of this section.

*STATUS: Having passed the General Assembly, H.4952 (R.279) became law without the Governor's signature on May 22, 2008 (Act No. 238).*

## **MILITARY EXEMPT FROM HUNTING LICENSES FOR SMALL GAME**

See summary under Military

# TAXATION

## STATE SALES TAX EXEMPTION FOR GROCERIES EXTENDED TO LOCALLY IMPOSED SALES TAXES

A conference committee has been appointed to address the differences of the House of Representatives and the Senate over H.4355, a bill allowing the state sales tax exemption for groceries to be extended to locally imposed sales taxes. The legislation, as approved by the House, exempts unprepared food items eligible for purchase with United States Department of Agriculture food coupons from a locally imposed sales and use tax, including the Local Option Sales Tax, the Capital Project Sales Tax, the Personal Property Tax Exemption Sales Tax, and the Transportation Infrastructure Sales Tax. The legislation, as approved by the Senate, allows the exemption for groceries to be extended to locally imposed sales taxes upon a majority vote of the county's governing body and referendum approval.

*STATUS: Since H.4355 passed the House of Representatives and the Senate in different versions, a conference committee was appointed on June 5, 2008, to address the bodies' differences on the legislation.*

## TAXATION OF BOATS

The General Assembly approved, as part of S.1171, legislation that revises provisions determining how long a boat must remain in South Carolina in order to become subject to state property tax. Under current law, a boat that is not currently taxed in this State and is not used exclusively in interstate commerce, is subject to South Carolina's property tax if it is present within this State for sixty consecutive days or for ninety days in the aggregate in a property tax year. This legislation authorizes a local governing body to pass an ordinance to provide that a boat is subject to the property tax if it is present within this State for one hundred eighty days in the aggregate in a property tax year.

*STATUS: Having passed the Senate and the House of Representatives, S.1171 was ratified on June 5, 2008 (R.359) and became law without the Governor's signature on June 12.*

# TRANSPORTATION

## BICYCLE TRAFFIC PROVISIONS

This legislation requires an operator of a motor vehicle to at all times maintain a safe operating distance between the motor vehicle and a bicycle.

When operating a bicycle upon a roadway, a bicyclist must exercise due care when passing a standing vehicle or one proceeding in the same direction.

The legislation revises requirements relating to bicycle lanes by providing that whenever a bicycle lane has been provided adjacent to a roadway, operators of motor vehicles may not block the bicycle lane to oncoming bicycle traffic and shall yield to a bicyclist in the bicycle lane before entering or crossing the lane. Bicyclists are required to ride in the bicycle lane except when necessary to pass another person riding a bicycle or to avoid an obstruction in the bicycle lane. However, bicyclists may ride on the roadway when there is only an adjacent recreational bicycle path available instead of a bicycle lane.

A bicyclist may ride in a lane other than the right-hand lane if only one lane is available that permits the bicyclist to continue on his intended route.

The legislation provides that it is unlawful to harass, taunt, or maliciously throw an object at or in the direction of any person on a bicycle. Violations are misdemeanors.

The legislation specifies the arm motions that a bicyclist is to employ in order to signal a change in direction or speed. A violation is punishable by a fine of \$25 dollars.

The legislation eliminates the current requirement that a bicycle be equipped with a bell or other device capable of producing an audible signal.

Except as otherwise provided, a violation of these provisions by the driver of a motor vehicle is subject to a civil fine of up to \$100 dollars unless a bicyclist is injured as a result of the violation. A person driving a motor vehicle who violates a one of these provisions and the violation is the proximate cause of a: (1) minor injury to a bicyclist must be assessed a civil fine of up to \$500 dollars; or (2) great bodily injury to a bicyclist must be assessed a civil fine of not more than \$1,000 dollars.

*STATUS: Having been approved by the General Assembly, H.3006 (R.367) was signed into law by the Governor on June 10, 2008.*

## “I BELIEVE” SPECIAL LICENSE PLATES

See summary under Heritage and Holidays

## IDLING RESTRICTIONS FOR COMMERCIAL DIESEL VEHICLES

See summary under Energy/Conservation

## RED LIGHTS

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If a driver of a motorcycle or moped, or a bicycle rider, approaches an intersection that is controlled by a traffic-control device, the driver may proceed through the intersection on a steady red light only if the driver or rider, as the case may be: (a) comes to a full and complete stop at the intersection for 120 seconds; and (b) exercises due care as provided by law, otherwise treats the traffic control device as a stop sign, and determines it is safe to proceed.

*STATUS: Having been approved by the General Assembly, S.111 (R.281) was signed into law by the Governor on May 27, 2008 (Act No. 240).*

## **"THE SOUTH CAROLINA CDL DRUG TESTING ACT"**

This legislation requires all medical review officers or breath alcohol technicians hired by or under contract to certain commercial driver employers to report to the employers a verified positive drug test or positive alcohol confirmation test, a refusal to provide a specimen, or the submission of an adulterated, diluted or substituted specimen. Employers must then make report of these items to the Department of Motor Vehicles (DMV) within three business days. Employers must maintain records of these reports for three years, and these records are subject to inspection by the Department of Public Safety. Failure to make required reports is subject to a fine of up to \$500 dollars, which must be credited to the Department of Public Safety's Transport Police Division. This legislation further provides that a person is disqualified from driving a commercial motor vehicle if a report has been received by the DMV that the person has received a verified positive drug test or positive alcohol confirmation test, or refused to take a drug or alcohol test. The disqualification remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional and has successfully completed a treatment program. A person who is disqualified more than three times in a five-year period is disqualified for life.

*STATUS: Having been approved by the General Assembly, S.880 (R.272) was signed into law by the Governor on May 21, 2008 (Act No. 232).*

## TRANSPORTATION INFRASTRUCTURE STUDY COMMITTEE

The General Assembly approved legislation establishing a committee to study the feasibility and benefits of the construction, operation, and maintenance of roads, streets, highways, bridges, and tunnels through the utilization of public private partnerships and ventures.

*STATUS: Having been approved by the General Assembly, S.1182 (R.313) was signed into law by the Governor on June 4, 2008.*

## VETERAN LICENSE PLATES

See summary under Military

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